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12  
13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
15 **WESTERN DIVISION**  
16

17 **STATE OF CALIFORNIA,**  
18 **COMMONWEALTH OF**  
19 **MASSACHUSETTS, STATE OF**  
20 **CONNECTICUT, STATE OF**  
21 **DELAWARE, DISTRICT OF COLUMBIA,**  
22 **STATE OF ILLINOIS, STATE OF**  
23 **MAINE, STATE OF MARYLAND, STATE**  
24 **OF MICHIGAN, STATE OF**  
25 **MINNESOTA, STATE OF NEVADA,**  
26 **STATE OF NEW JERSEY, STATE OF**  
27 **NEW MEXICO, STATE OF NEW YORK,**  
28 **STATE OF OREGON,**  
**COMMONWEALTH OF**  
**PENNSYLVANIA, STATE OF RHODE**  
**ISLAND, STATE OF VERMONT,**  
**COMMONWEALTH OF VIRGINIA, and**  
**STATE OF WASHINGTON,**

Plaintiffs,

v.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**KEVIN K. MCALEENAN**, in his official capacity as Acting Secretary of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY, ALEX M. AZAR, II**, in his official capacity as Secretary of Health and Human Services; **U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; MARK A. MORGAN**, in his official capacity as Acting Commissioner for U.S. Customs and Border Protection; **U.S. CUSTOMS AND BORDER PROTECTION; MATTHEW T. ALBENCE**, in his official capacity as Acting Director for U.S. Immigration and Customs Enforcement; **U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; JONATHAN HAYES**, in his official capacity as Director of the Office of Refugee Resettlement; **OFFICE OF REFUGEE RESETTLEMENT**,

Defendants.

## INTRODUCTION

1. Plaintiffs State of California, Commonwealth of Massachusetts, State of Connecticut, State of Delaware, District of Columbia, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon, Commonwealth of Pennsylvania, State of Rhode Island, State of Vermont, Commonwealth of Virginia, and State of Washington (collectively, States) bring this action to challenge a new U.S. Department of Homeland Security and U.S. Department of Health and Human Services rule that purports to implement a long-standing settlement agreement that “sets out nationwide policy for the detention, release, and treatment of minors in [immigration] custody” for over 20 years. Stipulated Agreement, *Flores v. Reno*, Case No. CV 85-4544 RJK (Px) (C.D. Cal. filed Jan. 17, 1997) (the *Flores* Agreement). In fact, the rule as promulgated

1 violates a number of the *Flores* Agreement's critical protections for immigrant  
2 children's safety and well-being, intrudes into the core state function of licensing  
3 care facilities for children, and will cause irreparable harm to immigrant children,  
4 their parents, and the States which will welcome them upon their release from  
5 federal custody.

6 2. The new rule, *Apprehension, Processing, Care, and Custody of Alien*  
7 *Minors and Unaccompanied Alien Children*, 84 Fed. Reg. 44,392 (Aug. 23, 2019),  
8 (Rule), contravenes the *Flores* Agreement's terms by stripping children in  
9 immigration custody of protections ensuring their placement in the least restrictive  
10 setting consistent with their best interests and their prompt release from federal  
11 custody whenever possible. Instead, the Rule permits and calls for the prolonged  
12 and indefinite detention of immigrant children in detention facilities.

13 3. The Rule removes the *Flores* Agreement's core mechanism for  
14 ensuring the safety and well-being of children in immigration custody: state  
15 licensing and oversight. By replacing state licensing and enforcement of state child  
16 welfare laws with audits by federal contractors, the Rule will prevent the States  
17 from fulfilling their historical and ongoing responsibility to protect the health,  
18 safety, and welfare of all children, including immigrant children held in care  
19 facilities and with foster care families within their boundaries.

20 4. The Rule's imposition of indefinite and prolonged detention of  
21 children and families in prison-like conditions will harm the mental and physical  
22 health of children and their parents, many of whom will ultimately be released to  
23 communities within the States. The long-term impact of these harms will be borne  
24 by the States, which have robust programs and services to support the mental and  
25 physical health of their residents, including newly arrived immigrants.

26 5. Although the federal government claims these changes are required to  
27 avoid forcibly separating families that are apprehended together, this claim is belied  
28 by the Defendant agencies' disregard for compelling evidence that less restrictive

1 alternatives to detention have proven effective at ensuring that families participate  
2 in their immigration proceedings.

3 6. The Rule's creation of a parallel federal licensing scheme for the  
4 residential care of dependent children is *ultra vires*, outside Defendants' statutory  
5 authority, and intrudes on the States' sovereign interests—and the District of  
6 Columbia's quasi-sovereign interest—in enforcing their respective child welfare  
7 standards.

8 7. Defendants' actions in promulgating the Rule are arbitrary and  
9 capricious, an abuse of discretion, contrary to law, in excess of statutory authority,  
10 and contrary to constitutional right in violation of the Administrative Procedure  
11 Act. The Rule is not justified by a change of circumstances or other reasoned basis  
12 for departing from the requirements and protections of the *Flores* Agreement.

13 8. The Rule contemplates the indefinite and prolonged detention of  
14 families and children in prison-like facilities without individualized determinations  
15 regarding flight risk or danger to the community. Defendants' stated goal of  
16 deterring noncitizens from coming to the United States is also an impermissible and  
17 illegitimate basis for civil detention. As a result, the Rule violates the Due Process  
18 Clause of the U.S. Constitution.

19 9. The States seek a preliminary and permanent relief to prohibit  
20 Defendants from implementing the Rule, an order vacating the Rule, and a  
21 declaratory judgment that the Rule is invalid.

## 22 JURISDICTION

23 10. This Court has jurisdiction over the claims alleged in this Complaint  
24 pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201 (declaratory  
25 relief), and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

## 26 VENUE AND INTRA-DISTRICT ASSIGNMENT

27 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e). This is  
28 a civil action in which Defendants are agencies of the United States or officers of

1 such an agency and Plaintiff State of California resides in this district.

2 12. Under General Order 19-03, assignment to the Western Division is  
3 proper because the Attorney General of California, counsel for Plaintiff State of  
4 California, has an office in the Western Division but not in the other divisions of  
5 the district. The U.S. Attorney for the Central District of California also has its  
6 main office in the Western Division. In addition, a Notice of Related Case to a case  
7 currently pending in the Western Division is being filed concurrently herewith, on  
8 the grounds that this case requires resolution of substantially similar questions of  
9 law as those presented in *Flores v. Barr*, Case No. 2:85-cv-04544-DMG.

### 10 **PARTIES**

11 13. Plaintiff State of California is a sovereign state of the United States of  
12 America. California Attorney General Xavier Becerra brings this action in  
13 furtherance of his duty, under art. V, § 13 of the California Constitution, to see that  
14 the laws of the State are uniformly and adequately enforced. This challenge is  
15 brought pursuant to the Attorney General's independent constitutional, statutory,  
16 and common law authority to represent the public interest.

17 14. Plaintiff Commonwealth of Massachusetts is a sovereign state of the  
18 United States of America. Massachusetts Attorney General Maura Healey has both  
19 statutory and common law authority to bring lawsuits to protect the interests of the  
20 Commonwealth of Massachusetts and the public interest of the people. *Feeney v.*  
21 *Commonwealth*, 366 N.E.2d 1262, 1265-66 (Mass. 1977); Mass. Gen. Laws Ch. 12,  
22 §§ 3, 10.

23 15. Plaintiff State of Connecticut is a sovereign state of the United States  
24 of America. Connecticut Attorney General William Tong brings this action to  
25 protect the interests of the state as the state's chief legal officer under Conn. Gen.  
26 Stat. § 3-124 *et seq.*

27 16. Plaintiff State of Delaware brings this action by and through its  
28 Attorney General Kathleen Jennings. The Attorney General is the chief law

1 enforcement officer of the State of Delaware and has the authority to file civil  
2 actions in order to protect public rights and interests. Del. Const., art. III; Del.  
3 Code Ann. tit. 29, § 2504.

4 17. Plaintiff the District of Columbia (the District) is a municipal  
5 corporation empowered to sue and be sued, and is the local government for the  
6 territory constituting the permanent seat of the federal government. The District  
7 brings this case through the Attorney General for the District of Columbia, who is  
8 the chief legal officer for the District and possesses all powers afforded the  
9 Attorney General by the common and statutory law of the District. The Attorney  
10 General is responsible for upholding the public interest and has the authority to file  
11 civil actions in order to protect the public interest. D.C. Code § 1-301.81(a)(1).

12 18. Plaintiff State of Illinois is a sovereign state of the United States of  
13 America. Attorney General Kwame Raoul is the chief legal officer of the State, Ill.  
14 Const. art. V, § 15, and is authorized to pursue this action under 15 Ill. Comp. Stat.  
15 205/4.

16 19. Plaintiff State of Maine, represented by and through its Attorney  
17 General, is a sovereign state of the United States of America. The Attorney  
18 General of Maine, Aaron M. Frey, is a constitutional officer with the authority to  
19 represent the State of Maine in all matters and serves as its chief legal officer with  
20 general charge, supervision, and direction of the State's legal business. Me. Const.  
21 art. IX, § 11; Me. Rev. Stat., tit. 5 §§ 191 *et seq.* The Attorney General's powers  
22 and duties include acting on behalf of the State and the people of Maine in the  
23 federal courts on matters of public interest. The Attorney General has the authority  
24 to file suit to challenge action by the federal government that threatens the public  
25 interest and welfare of Maine residents as a matter of constitutional, statutory, and  
26 common law authority.

27 20. Plaintiff State of Maryland is a sovereign state of the United States of  
28 America. Maryland is represented by and through its chief legal officer, Attorney

1 General Brian E. Frosh. Under the Constitution of Maryland, and as directed by the  
2 Maryland General Assembly, the Attorney General has the authority to file suit to  
3 challenge action by the federal government that threatens the public interest and  
4 welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); 2017 Md. Laws, J.  
5 Res. 1.

6 21. Plaintiff State of Michigan is a sovereign state of the United States of  
7 America. In Michigan, the Attorney General, Dana Nessel, is the chief law  
8 enforcement of the State, *Fieger v. Cox*, 734 N.W.2d 602, 604 (Mich. Ct. App.  
9 2007), and the Attorney General has the authority to intervene in any action in  
10 which the Attorney General believes the interests of the People of the State of  
11 Michigan are implicated, Mich. Comp. Laws § 14.28.

12 22. Plaintiff State of Minnesota is a sovereign state of the United States of  
13 America. Attorney General Keith Ellison is the chief legal officer of the State of  
14 Minnesota and his powers and duties include acting in federal court in matters of  
15 State concern and to protect Minnesota residents. Minn. Stat. § 8.01.

16 23. Plaintiff State of Nevada, represented by and through its Attorney  
17 General, is a sovereign state of the United States of America. Attorney General  
18 Aaron D. Ford is the chief legal officer of the State of Nevada and has the authority  
19 to commence actions in federal court to protect the interests of Nevada. Nev. Rev.  
20 Stat. 228.170.

21 24. Plaintiff State of New Jersey, represented by and through its Attorney  
22 General, is a sovereign state of the United States of America. Attorney General  
23 Gurbir S. Grewal is New Jersey's chief legal officer and is authorized to pursue this  
24 action on behalf of the State. N.J. Stat. Ann. § 52:17A-4(e), (g).

25 25. Plaintiff State of New Mexico is a sovereign state of the United States  
26 of America. Attorney General Hector Balderas is the chief legal officer of the State  
27 of New Mexico. He is authorized to prosecute all actions and proceedings on  
28 behalf of New Mexico when, in his judgment, the interest of the State requires such



1 action. N.M. Stat. Ann. § 8-5-2(B). This challenge is brought pursuant to Attorney  
2 General Balderas's statutory and common law authority.

3 26. Plaintiff State of New York, represented by and through its Attorney  
4 General, Letitia James, is a sovereign state of the United States of America. The  
5 Attorney General is New York State's chief law enforcement officer, and is  
6 authorized to pursue this action pursuant to N.Y. Exec. Law § 63.

7 27. Plaintiff State of Oregon is a sovereign state of the United States of  
8 America. The Attorney General of Oregon, Ellen Rosenblum, is the chief law  
9 officer of Oregon and is empowered to bring this action on behalf of the State of  
10 Oregon, the Governor, and the affected state agencies under Or. Rev. Stat. §§  
11 180.060, 180.210, and 180.220.

12 28. Plaintiff Commonwealth of Pennsylvania is a sovereign state of the  
13 United States of America. This action is brought on behalf of the Commonwealth  
14 by Attorney General Josh Shapiro, the "chief law officer of the Commonwealth."  
15 Pa. Const. art. IV, § 4.1. Attorney General Shapiro brings this action on behalf of  
16 the Commonwealth pursuant to his statutory authority. 71 Pa. Stat. § 732-204(c).

17 29. Plaintiff State of Rhode Island is a sovereign state of the United States  
18 of America. Attorney General Peter Neronha has the authority to bring action on  
19 behalf of the State in accordance with the powers and duties of the Attorney  
20 General, as derived from Article IX, Section 12 of the Constitution of the State of  
21 Rhode Island, Chapter 9 of Title 42 of the General Laws of Rhode Island, as  
22 amended, and the Common Law.

23 30. Plaintiff State of Vermont is a sovereign state of the United States of  
24 America. The Attorney General is the State's chief legal officer and has the  
25 authority to file civil actions to protect Vermont's rights and interests. Vt. Stat.  
26 Ann. tit. 3, §§ 152, 157.

27 31. Plaintiff Commonwealth of Virginia is a sovereign state of the United  
28 States of America. Attorney General Mark Herring is the chief legal adviser to the



1 Commonwealth of Virginia. His powers and duties include acting in federal court  
2 on behalf of the Commonwealth on matters of public concern.

3 32. Plaintiff State of Washington is a sovereign state of the United States  
4 of America. The Governor is the chief executive officer of the State, responsible  
5 for overseeing its operations and ensuring that its laws are faithfully executed. The  
6 Washington State Attorney General is the chief legal advisor to the State. The  
7 Washington State Attorney General's powers and duties include acting in federal  
8 court on matters of public concern. Wash. Rev. Code § 43.10.030(1).

9 33. Defendant Kevin V. McAleenan is the Acting Secretary of the U.S.  
10 Department of Homeland Security and is responsible for its functions and the  
11 functions of its component organizations. He is sued in his official capacity.

12 34. Defendant U.S. Department of Homeland Security (DHS) is a federal  
13 agency charged with, *inter alia*, the administration and enforcement of federal  
14 immigration law. DHS promulgated the rule entitled *Apprehension, Processing,*  
15 *Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 Fed.  
16 Reg. 44,392 (Aug. 23, 2019), that is challenged in this litigation.

17 35. Defendant Alex M. Azar, II, is the Secretary of the U.S. Department of  
18 Health and Human Services and is responsible for its functions and the functions of  
19 its component organizations. He is sued in his official capacity.

20 36. Defendant U.S. Department of Health and Human Services (HHS) is a  
21 federal agency charged with, *inter alia*, the care and custody of unaccompanied  
22 immigrant children. HHS promulgated the rule entitled *Apprehension, Processing,*  
23 *Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 Fed.  
24 Reg. 44,392 (Aug. 23, 2019), that is challenged in this litigation.

25 37. Defendant Mark A. Morgan is the Acting Commissioner of U.S.  
26 Customs and Border Protection and is responsible for its functions, including initial  
27 detention and transfer of immigrant children and families. He is sued in his official  
28 capacity.

1           38. Defendant U.S. Customs and Border Protection (CBP) is the  
2 component agency of DHS that is responsible for the temporary detention of  
3 children and families encountered at the border and for transfer of immigrant  
4 children and families to Immigration and Customs Enforcement or Office of  
5 Refugee Resettlement custody. CBP is the successor to the U.S. Immigration and  
6 Naturalization Service with respect to the *Flores* Agreement's provisions regarding  
7 initial detention and transfer of immigrant children.

8           39. Defendant Matthew T. Albence is the Acting Director of U.S.  
9 Immigration and Customs Enforcement and is responsible for its functions,  
10 including detention of immigrant children and families in its custody. He is sued in  
11 his official capacity.

12           40. Defendant U.S. Immigration and Customs Enforcement (ICE) is the  
13 component agency of DHS that is responsible for the custody of accompanied  
14 children and families that remain detained pending adjudication of their asylum or  
15 other applications or removal proceedings and the successor to the U.S.  
16 Immigration and Naturalization Service with respect to the *Flores* Agreement's  
17 application to accompanied immigrant children.

18           41. Defendant Jonathan Hayes is the Director of the Office of Refugee  
19 Resettlement and is responsible for its functions, including the care and custody of  
20 unaccompanied immigrant children. He is sued in his official capacity.

21           42. Defendant Office of Refugee Resettlement (ORR) is the component  
22 agency of HHS that is responsible for the care and custody of unaccompanied  
23 immigrant children and the successor to the U.S. Immigration and Naturalization  
24 Service with respect to the *Flores* Agreement's application to unaccompanied  
25 immigrant children.  
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## BACKGROUND

### **I. THE STATES' ROLE IN ESTABLISHING AND ENFORCING STANDARDS OF CARE FOR DEPENDENT CHILDREN**

43. The States have a compelling interest in protecting the physical, emotional, and psychological health of children within their borders.

44. Ensuring child welfare, including establishing and enforcing standards for care and licensing residential placements for dependent children, is a police power traditionally vested in and reserved to the states.

45. Each of the States has comprehensive standards and licensing procedures to ensure that residential placements for dependent children provide care and services in settings that further the best interests of the child.

46. Since 1997, the States' standards have also governed residential placements for children in federal immigration custody within each of the States for children placed in state-licensed facilities pursuant to the *Flores* Agreement and federal law. *See, e.g., Flores v. Lynch*, 828 F.3d 898, 906 (9th Cir. 2016) ("obvious purpose" of requiring placement of unaccompanied immigrant children in state-licensed facilities is to "use the existing apparatus of state licensure to independently review detention conditions").

### **II. FLORES V. RENO LITIGATION AND SETTLEMENT AGREEMENT**

47. In 1984, the Western Region of the U.S. Immigration and Naturalization Service (INS), ICE's predecessor agency, adopted a policy prohibiting the release of detained children to anyone other than "a parent or lawful guardian, except in unusual and extraordinary cases." *Reno v. Flores*, 507 U.S. 292, 296 (1993) (internal quotations omitted).

48. The next year, four immigrant children filed a class action lawsuit in the U.S. District Court for the Central District of California, challenging the policy and the detention conditions to which they were subjected as a result of the policy.

49. After significant litigation, the parties reached an agreement, which

1 was approved by the Court in 1997. The *Flores* Agreement defined the plaintiff  
 2 class as “All minors who are detained in the legal custody of the INS.” *Flores*  
 3 Agreement ¶ 10.

4 50. The *Flores* Agreement requires that the INS—and its successor  
 5 agencies, DHS and HHS—hold detained children in facilities that are safe and  
 6 sanitary and that are consistent with the agencies’ concern for the particular  
 7 vulnerability of children. *Id.* ¶ 12A. Within five days of initial detention, the  
 8 agencies must transfer the child to a “licensed program,” except “in the event of an  
 9 emergency of influx of minors into the United States,” in which case the agencies  
 10 must make the required placement “as expeditiously as possible.” *Id.*

11 51. The *Flores* Agreement states a “general policy favoring release,” such  
 12 that when detention is not required to secure a child’s timely appearance in  
 13 immigration proceedings or to ensure the child’s safety or the safety of others, “the  
 14 [agencies] shall release a minor from [their] custody without unnecessary delay, in  
 15 the following order of preference, to:

- 16 a. a parent;
- 17 b. a legal guardian;
- 18 c. an adult relative (brother, sister, aunt, uncle, or grandparent);
- 19 d. an adult individual or entity designated by the parent or legal  
 20 guardian [in a signed declaration before an immigration or  
 21 consular officer or with proof of paternity or guardianship];
- 22 e. a licensed program willing to accept legal custody; or
- 23 f. an adult individual or entity seeking custody, in the discretion of  
 24 the INS, when it appears that there is no likely alternative to  
 25 long term detention and family reunification does not appear to  
 26 be a reasonable possibility.” *Id.* ¶ 14.

27 52. The *Flores* Agreement defines the term “licensed program” as “any  
 28 program, agency or organization that is licensed by an appropriate State agency to

1 provide residential, group, or foster care services for dependent children, including  
 2 a program operating group homes, foster homes, or facilities for special needs  
 3 minors,” and states that all such programs “shall be non-secure as required under  
 4 state law; provided however, that a facility for special needs minors may maintain  
 5 that level of security permitted under state law which is necessary for the protection  
 6 of minors or others in appropriate circumstances . . . .” *Id.* ¶ 6.

7 53. The *Flores* Agreement requires Defendant agencies to make  
 8 “reasonable efforts to provide licensed placements in those geographical areas  
 9 where the majority of minors are apprehended,” specifically including “southern  
 10 California.” *Id.* ¶ 6.

11 54. In 2001, the parties to the *Flores* Agreement signed an addendum  
 12 stipulating that the agreement would remain in place until 45 days after defendants’  
 13 publication of final regulations implementing the agreement, and stating that  
 14 notwithstanding the termination date, “the INS shall continue to house the general  
 15 population of minors in INS custody in facilities that are state-licensed for the care  
 16 of dependent minors.” The terms of this addendum were incorporated into a  
 17 binding court order.

18 55. A true and correct copy of the *Flores* Agreement is attached hereto as  
 19 Exhibit A and incorporated by this reference.

### 20 **III. THE HOMELAND SECURITY ACT AND THE WILLIAM WILBERFORCE** 21 **TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008**

22 56. With the Homeland Security Act of 2002, Congress dissolved the INS  
 23 and transferred its authority to DHS. Pub. L. No. 107-26, 116 Stat. 2135; *see* 6  
 24 U.S.C. §§ 111, 231, 291. Congress also delegated the care and custody of  
 25 unaccompanied immigrant children to ORR. INS’s obligations under the *Flores*  
 26 Agreement were preserved and transferred to DHS and ORR through the savings  
 27 provisions of the Homeland Security Act. 6 U.S.C. § 552(a)(1) (incorporated by  
 28 reference into 6 U.S.C. § 279(f)(2)).

57. In 2008, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (principally codified in relevant part at 8 U.S.C. § 1232). The TVPRA conferred responsibility for the care and custody of “unaccompanied alien children” on the Secretary of HHS. It also incorporated by reference and partially codified the *Flores* Agreement by creating statutory standards for the treatment of unaccompanied children. The TVPRA did not diminish the federal government’s obligations under the *Flores* Agreement with respect to unaccompanied *or* accompanied children.

58. ORR contracts with state-licensed public and private facilities to provide care and custody to unaccompanied immigrant children until they can be placed with a sponsor.

59. Under the TVPRA, a child’s status as “unaccompanied” is established at the time of initial contact with immigration authorities. Federal agencies such as the U.S. Citizenship and Immigration Service (USCIS) treated individuals initially designated unaccompanied as such for purposes of adjudicating applications for immigration benefits absent a change in designation. In approximately 2017, as a matter of practice, USCIS began to reassess a child’s status as unaccompanied at the time a child filed an application with USCIS. USCIS formalized this change in a policy memorandum in 2019. USCIS, *Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children* (May 31, 2019), [https://www.uscis.gov/sites/default/files/USCIS/Refugee%2C%20Asylum%2C%20and%20Int%27I%20Ops/Asylum/Memo\\_-\\_Updated\\_Procedures\\_for\\_I-589s\\_Filed\\_by\\_UACs\\_5-31-2019.pdf](https://www.uscis.gov/sites/default/files/USCIS/Refugee%2C%20Asylum%2C%20and%20Int%27I%20Ops/Asylum/Memo_-_Updated_Procedures_for_I-589s_Filed_by_UACs_5-31-2019.pdf).

#### IV. FEDERAL FAMILY DETENTION

60. Prior to 2001, families apprehended for entering the United States without authorization were most often released rather than detained.

61. However, beginning in 2001, ICE began detaining a limited number of

1 families in detention facilities (referred to as “Family Residential Centers” by ICE)  
2 in Pennsylvania, Texas, and New Mexico.

3 62. All of these family detention facilities have come under intense  
4 criticism for poor conditions that cause harm to children.

5 63. Whether or not the so-called Family Residential Centers are locked,  
6 immigrants detained there—including children—are not free to leave.

7 64. Legal advocates—including class counsel in *Flores*—have challenged  
8 family detention facilities as violating the *Flores* Agreement and other legal  
9 mandates.

10 65. In February 2007, the Women’s Refugee Commission and Lutheran  
11 Immigration and Refugee Service published a report detailing “prison-like”  
12 conditions in family detention facilities in Pennsylvania and Texas, as well as  
13 developmental harm inflicted on children by being held in family detention.

14 66. In late 2007, pursuant to a settlement agreement that resolved a case  
15 challenging conditions at a 500-bed family detention facility in Texas, ICE adopted  
16 “ICE/DRO Residential Standards” for family detention (ICE Residential  
17 Standards, also referred to as Family Residential Standards). USCIS, *Family*  
18 *Residential Standards*, <https://www.ice.gov/detention-standards/family-residential>  
19 (last updated Jan. 3, 2018). These standards fall short of the requirements of the  
20 *Flores* Agreement by failing to provide for individual needs assessments; minimum  
21 hours of recreation; individual and group counseling services; and privacy for  
22 family visitation and correspondence, among other important protections.

23 67. In October 2014, the Women’s Refugee Commission and Lutheran  
24 Immigration & Refugee Service published a report finding that family detention  
25 facilities in Artesia, New Mexico and Karnes City, Texas were inappropriate for  
26 mothers and children, traumatized families, undermined basic family structures, and  
27 had a devastating psycho-social impact. The authors also reported that families  
28 were detained without an individualized assessment of flight or security risk and



1 without adequate consideration of alternatives to detention.

2 68. In 2015, Defendant DHS established the DHS Advisory Committee on  
3 Family Residential Centers. This committee's primary recommendation began:  
4 "DHS's immigration enforcement practices should operationalize the presumption  
5 that detention is generally neither appropriate nor necessary for families – and that  
6 detention or the separation of families for purposes of immigration enforcement or  
7 management, or detention is never in the best interest of children. DHS should  
8 discontinue the general use of family detention, reserving it for the rare cases when  
9 necessary following an individualized assessment of the need to detain because of  
10 danger or flight risk that cannot be mitigated by conditions of release." DHS  
11 Advisory Committee on Family Residential Centers, *Final Report*, 2, (2016),  
12 [https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-](https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf)  
13 [16093.pdf](https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf).

14 69. State licensing requirements that, for the most part, do not allow for  
15 family detention have prevented ICE from subjecting children to prolonged  
16 detention with their parents.

17 70. In 2016, the Pennsylvania Department of Human Services revoked and  
18 refused to renew the license for the only family detention facility in Pennsylvania,  
19 the Berks County Residential Center. This decision was reversed by an  
20 administrative law judge. The Pennsylvania Department of Human Services  
21 requested consideration and the decision is currently under administrative  
22 reconsideration. The reconsideration itself has been stayed pending resolution of a  
23 motion to intervene, which is currently before the Commonwealth Court of  
24 Pennsylvania.

25 71. By letter dated July 18, 2018, the medical and psychiatric subject  
26 matter experts for DHS's Office of Civil Rights and Civil Liberties reported  
27 "significant compliance issues resulting in harm to children" to the U.S. Senate  
28 Whistleblowing Caucus, based on ten investigations of family detention facilities

1 over four years. Their findings included significant weight loss in children that  
2 went largely unnoticed by facility medical staff, dangerously inadequate medical  
3 care, and physically dangerous conditions, among other concerns. These experts  
4 stated that “the fundamental flaw in family detention is not just the risk posed by  
5 the conditions of confinement,” but in fact “no amount of programming that can  
6 ameliorate the harms created by the very act of confining children to detention  
7 centers.” Letter from Scott Allen & Pamela McPherson to Senator Charles  
8 Grassley & Senator Ron Wyden (July 17, 2018),  
9 [https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclo-](https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf)  
10 [sure%20SWC.pdf](https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf).

11 **V. FLORES ENFORCEMENT PROCEEDINGS AND THE FEDERAL**  
12 **GOVERNMENT’S EFFORTS TO MODIFY THE AGREEMENT**

13 72. In 2015, in response to a new ICE policy of detaining all female-  
14 headed families—including children—in secure, unlicensed facilities for the  
15 duration of their immigration proceedings, the plaintiffs in *Flores* sought to enforce  
16 the consent decree. The federal government filed a motion to amend the *Flores*  
17 Agreement. In its motion to amend, DHS sought to clarify, *inter alia*, that  
18 immigrant children who arrive in the United States accompanied by a parent or  
19 legal guardian do not have a right to be released to a parent, legal guardian, or adult  
20 relative; and that the state licensing requirement does not apply to family residential  
21 facilities. The *Flores* Court held, *inter alia*, that the release provision of the *Flores*  
22 Agreement applied to children who come into federal immigration custody  
23 accompanied by their parents and that housing children in Family Residential  
24 Centers violated the Agreement because the facilities were both secure and  
25 unlicensed. *Flores v. Johnson*, 212 F. Supp. 3d 864, 871, 877 (C.D. Cal. 2015).  
26 The Court found the defendants in material breach and denied DHS’s motion to  
27 modify the Agreement. *Id.* at 875, 880, 882, 886. The Ninth Circuit affirmed the  
28 district court’s decision that modification of the consent decree was not warranted.

1 *Flores v. Lynch*, 828 F.3d 898, 910 (9th Cir. 2016).

2 73. In 2017, the Ninth Circuit affirmed the *Flores* Court enforcing the  
3 rights of unaccompanied immigrant children to seek bond redetermination in a  
4 hearing before an immigration judge to challenge their placement in secure  
5 facilities by ORR. *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017).

6 74. On April 6, 2018, then-U.S. Attorney General Jefferson Beauregard  
7 Sessions III, announced a new “zero tolerance” policy under which all adult non-  
8 citizens entering the United States without permission would be subject to criminal  
9 prosecution, with no exceptions for asylum seekers or those accompanied by  
10 children. The policy—which was later revealed to have been implemented prior to  
11 its announcement—resulted in thousands of children being separated from their  
12 parents and has since been enjoined. *Ms. L. v. U.S. Immigration and Customs*  
13 *Enforcement*, 310 F. Supp. 3d 1133, 1139, 1143, 1149 (S.D. Cal. 2018).

14 75. On June 20, 2018, President Donald J. Trump issued Executive Order  
15 13841 directing the Secretary of Homeland Security to “maintain custody of alien  
16 families during the pendency of any criminal improper entry or immigration  
17 proceedings involving their members,” “to the extent permitted by law.” Exec.  
18 Order No. 13841, 83 Fed. Reg. 29,435 (June 20, 2018). The Executive Order also  
19 directed the U.S. Attorney General to file a request with the U.S. District Court for  
20 the Central District of California to modify the *Flores* Agreement in a manner that  
21 would permit DHS “to detain alien families together throughout the pendency of  
22 criminal proceedings for improper entry or any removal or other immigration  
23 proceedings.” *Id.*

24 76. On June 21, 2018, the federal government filed an *ex parte* application  
25 requesting modification of the *Flores* Agreement to allow DHS to detain all  
26 families with children for the duration of their immigration proceedings in facilities  
27 that are not state-licensed. *See Flores v. Sessions*, Case No. CV 85-4544-DMG,  
28 2018 WL 4945000, at \*1 (C.D. Cal. July 9, 2018).

1           77. On July 9, 2018, the district court in *Flores* denied the federal  
2 government's *ex parte* application. *Id.* at \*5.

3           78. On September 6, 2018, the defendants in *Flores* filed a notice of  
4 appeal from the district court's denial of the federal government's *ex parte*  
5 application for relief from the *Flores* Agreement. On April 23, 2019, the  
6 defendants in *Flores* voluntarily dismissed their appeal, and on April 26, 2019, the  
7 Ninth Circuit dismissed the appeal. *Flores v. Barr*, No. 18-55063, 2018 WL  
8 3472723 (9th Cir. Apr. 26, 2019).

9           79. In addition to these and several other actions and orders to enforce the  
10 *Flores* Agreement, the Ninth Circuit Court of Appeals recently upheld the district  
11 court's order (1) requiring CBP to provide basic hygiene products such as soap and  
12 toothbrushes to children in its custody; and (2) requiring the federal government to  
13 apply the *Flores* Agreement's release provisions to children in expedited removal  
14 proceedings. *Flores v. Barr*, No. 17-56297, 2019 WL 3820265, at \*5, \*7 (9th Cir.  
15 Aug. 15, 2019).

## 16 **VI. THE AGENCIES' FLAWED AND UNLAWFUL NEW RULE**

17           80. On September 7, 2018, Defendants DHS and HHS published a Notice  
18 of Proposed Rulemaking in the Federal Register entitled *Apprehension, Processing,*  
19 *Care, and Custody of Alien Minors and Unaccompanied Alien Children* (NPRM).  
20 Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied  
21 Alien Children, 83 Fed. Reg. 45, 486 (Sept. 7, 2019). The NPRM gave notice of  
22 proposed regulations that purported to codify, and thereby terminate, the *Flores*  
23 Agreement. The NPRM proposed, *inter alia*, removing provisions to allow for the  
24 release of children who are apprehended with a parent or legal guardian to anyone  
25 other than a parent or legal guardian. The NPRM speculated that the *Flores*  
26 Agreement's release requirements for children and state-licensing requirements  
27 "may create a powerful incentive for adults to bring juveniles . . . to the United  
28 States," making family detention an important option to address the "significant and

1 ongoing influx of adults who have made the choice to enter the United States  
2 illegally with juveniles . . . .” *Id.* at 48,493.

3 81. On November 6, 2018, the Attorneys Generals of the states of  
4 California, Delaware, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New  
5 Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode  
6 Island, Vermont, Virginia, Washington, and the District of Columbia submitted  
7 joint comments opposing the NPRM. Multistate Letter dated Nov. 6, 2018,  
8 [https://oag.ca.gov/system/files/attachments/press-docs/2018.11.06-multistate-](https://oag.ca.gov/system/files/attachments/press-docs/2018.11.06-multistate-comment-letterdhs-docket-no.iceb-2018-0002-and-hhs-docket-no.hhs-os-2018-0023.pdf)  
9 [comment-letterdhs-docket-no.iceb-2018-0002-and-hhs-docket-no.hhs-os-2018-](https://oag.ca.gov/system/files/attachments/press-docs/2018.11.06-multistate-comment-letterdhs-docket-no.iceb-2018-0002-and-hhs-docket-no.hhs-os-2018-0023.pdf)  
10 [0023.pdf](https://oag.ca.gov/system/files/attachments/press-docs/2018.11.06-multistate-comment-letterdhs-docket-no.iceb-2018-0002-and-hhs-docket-no.hhs-os-2018-0023.pdf).

11 82. In response to the NPRM, DHS and HHS received more than 100,000  
12 comments, many describing a number of grave concerns about the proposed  
13 regulations and their impact. Commenters raised concerns about dangerous  
14 conditions at CBP facilities; noted the serious harm that prolonged family detention  
15 would cause to children and families, including increased risk of anxiety,  
16 depression, and Post-Traumatic Stress Disorder (PTSD); and argued that indefinite  
17 civil detention of immigrant children and families would violate the Due Process  
18 Clause, particularly where the purpose of the detention was general deterrence.  
19 Numerous commenters, including the American Academy of Pediatrics, the  
20 National Disability Rights Network, and a group of 78 Members of Congress, urged  
21 the importance of state licensing standards in providing basic protections and  
22 accountability for the health and safety of children’s residential facilities, and  
23 expressed concern that the proposed regulations would remove the state licensing  
24 requirement for facilities housing accompanied children.

25 83. On January 4, 2019, President Donald J. Trump sent a letter to all  
26 Members of Congress “on the need to secure our borders.” His letter named two  
27 “most pressing legal challenges,” the first of which was: “Terminate the Flores  
28 Settlement Agreement—which is preventing families from being held together

1 through removal.” President Trump Letter dated Jan. 4, 2019,  
 2 [https://www.whitehouse.gov/wp-content/uploads/2019/01/Border-Security-](https://www.whitehouse.gov/wp-content/uploads/2019/01/Border-Security-Letter.pdf)  
 3 [Letter.pdf](https://www.whitehouse.gov/wp-content/uploads/2019/01/Border-Security-Letter.pdf). In an accompanying slide presentation, the administration clarified the  
 4 goal to be, “***OVERRIDE THE FLORES SETTLEMENT AGREEMENT*** Allow  
 5 the U.S. Government to keep parents and children together for the duration of their  
 6 immigration proceedings.” A Border Security and Humanitarian Crisis, slide 8,  
 7 <https://www.whitehouse.gov/wp-content/uploads/2019/01/Border-Briefing.pdf> (last  
 8 visited Aug. 25, 2019).

9 84. On August 23, 2019, Defendants DHS and HHS published the final  
 10 rule that is the subject of this litigation, *Apprehension, Processing, Care, and*  
 11 *Custody of Alien Minors and Unaccompanied Alien Children*, 84 Fed. Reg. 44,392  
 12 (Aug. 23, 2019).

13 85. According to the Rule, its “primary purpose” is to implement the  
 14 *Flores* Agreement while responding to changes in law and circumstances, “and in  
 15 turn to enable termination of the agreement . . . [and] move away from judicial  
 16 governance to executive governance via regulation.” 84 Fed. Reg. 44,398.

17 86. In doing so, the Rule eschews the *Flores* Agreement’s most  
 18 fundamental provisions: its “general policy favoring release” of children, its general  
 19 principle that children shall be placed in the “least restrictive setting appropriate” to  
 20 their age and special needs, and its requirement that—to provide for their safety and  
 21 well-being—care for children in immigration custody shall be provided through  
 22 state-licensed programs for the care of dependent children. *Flores* Agreement,  
 23 Section IV; ¶ 11.

24 87. Throughout the Rule, Defendant agencies articulate an additional goal  
 25 of permitting immigration authorities to detain accompanied children and their  
 26 families in order to address the perceived “surge of adults who have made the  
 27 choice” to seek entry into the United States with their children. 84 Fed. Reg.  
 28 44,403. The Rule posits that the release of children required under the *Flores*



1 Agreement has “incentivized” travel to the United States and is responsible for  
2 increased migration of families to our borders.

3 88. Due in part to the inherent tension between the *Flores* Agreement’s  
4 clear requirements to foster release of immigrant children and Defendants’ interest  
5 in using detention as a deterrent to migration, Defendant agencies’ explanation of  
6 the Rule’s provisions lack the reasoned bases necessary for agency action and, in  
7 many instances, run counter to the evidence before the agencies in the  
8 administrative record. Moreover, in promulgating the Rule, Defendant agencies  
9 have failed to consider important aspects of the problems at issue.

10 89. As a result, the Rule sets forth regulations governing the detention and  
11 release of immigrant children that are contrary to the *Flores* Agreement’s binding  
12 obligations and which Defendant agencies attempt to justify by reference to  
13 erroneous statutory interpretations. Without reasoned explanation, these  
14 regulations depart from prior agency practices and precursor regulations that  
15 provided greater freedoms and rights to immigrant children and their family  
16 members.

17 **A. The Rule Eliminates, Substantially Alters, or Otherwise**  
18 **Undermines Critical Elements of the *Flores* Agreement and the**  
19 **TVPPRA**

20 90. Although the Rule purports to “parallel the relevant and substantive  
21 terms” of the *Flores* Agreement, in fact the Rule systematically undermines, alters,  
22 and even eliminates key elements of the Agreement, stripping children of  
23 84 Fed. Reg. 44,393. The rule also contravenes the TVPPRA’s requirements that  
24 unaccompanied children be placed in the least restrictive setting that is in the best  
25 interests of the child. 8 U.S.C. § 1232(c)(2).

26 **1. The Rule Prevents Prompt Release of Children from**  
27 **Detention**

28 91. Without regard for the particular category of immigration charges a



1 child may be facing, the *Flores* Agreement requires immigration authorities to  
 2 “release the minor without unnecessary delay,” except as necessary to secure the  
 3 child’s appearance in immigration proceedings or to ensure his or her safety or the  
 4 safety of others. *Flores* Agreement ¶ 14.

5 92. By contrast, the Rule creates three new obstacles to release of children  
 6 in DHS custody that were not contemplated by the *Flores* Agreement.

7 93. First, the Rule amends an existing regulation to eliminate release on  
 8 humanitarian or public interest parole for children in expedited removal  
 9 proceedings under 8 U.S.C. § 1225(b). 84 Fed. Reg. 44,410-412 (describing  
 10 changes to 8 C.F.R. § 212.5 to deny parole to children in expedited removal that  
 11 have not received a credible fear determination absent a “medical emergency” or as  
 12 required for a “legitimate law enforcement objective”).

13 94. Second, the Rule newly limits access to bond hearings for children in  
 14 DHS custody, allowing them only for children in removal proceedings under  
 15 section 240 of the Immigration and Naturalization Act, to the extent permitted by a  
 16 separate regulation, 8 C.F.R. § 1003.19. 84 Fed. Reg. 44,529, (to be codified at 8  
 17 C.F.R. § 236.3(m)). Under this provision children who are “arriving aliens”—such  
 18 as asylum seekers that are encountered at a port of entry—will not be permitted to  
 19 seek release on bond.

20 95. Third, whereas the *Flores* Agreement required immigration authorities  
 21 to release children to a parent, legal guardian, adult relative, or other adult seeking  
 22 custody—and to “make prompt and continuous efforts” to do so, *Flores* Agreement  
 23 ¶ 18—the Rule provides that DHS will “make prompt and continuous efforts” to  
 24 release an accompanied child that is otherwise eligible for release to a parent or  
 25 legal guardian who is available to provide care and physical custody. 84 Fed. Reg.  
 26 44,529, (to be codified at 8 C.F.R. § 236.3(j)(5)(i)). If a parent or legal guardian is  
 27 not available, the Rule permits but does not require DHS to facilitate release to  
 28 another adult relative. *Id.* The Rule eliminates, for accompanied children, the

1 option to be released to an adult other than a sibling, uncle, aunt, or grandparent.

2 96. Thus, the Rule permits—and in some cases requires—the ongoing  
3 detention of accompanied children with their parents, which is a departure from the  
4 previous regulation allowing DHS to effectuate the release of a “parent, legal  
5 guardian, or adult relative” in immigration detention in order to allow for release of  
6 a child for whom there was no other suitable sponsor available. *Cf.* 8 C.F.R.  
7 § 236.3(b)(2).

8 97. By requiring indefinite detention of parent-child units together, the  
9 Rule does not facilitate—and in fact it contravenes—the familial liberty interests  
10 recognized in *Ms. L. v. U.S. Immigration and Customs Enforcement*, 302 F. Supp.  
11 3d 1149 (S.D. Cal. 2018). Without any finding of unfitness, parents will be  
12 deprived of the ability to make choices for the care and custody of their children, as  
13 the federal government will maintain indefinite custody and control of both parent  
14 and child.

15 98. The Rule also fails to ensure that unaccompanied children in ORR  
16 custody will be released in accordance with the *Flores* Agreement and the TVPRA.

17 99. The Rule fails to incorporate procedural safeguards called for by  
18 commenters in the rulemaking process to ensure that the family reunification and  
19 release processes proceed in a timely manner and provide potential sponsors a  
20 meaningful opportunity to appeal a denial of release or finding of non-suitability.  
21 84 Fed. Reg. 44,463.

22 100. Moreover, the Rule creates obstacles to release by adding onerous  
23 terms to the custodial release agreement that a sponsor must sign before obtaining  
24 custody of a child that are not required by the *Flores* Agreement or applicable law.  
25 The Rule fails to note or respond to comments made in the rulemaking process  
26 addressing these departures from the *Flores* Agreement, their potential effects on  
27 the timely release of children from ORR custody, and their impermissible intrusion  
28 on parental rights. 84 Fed. Reg. 44,464-465.

101. These and other aspects of the Rule that unnecessarily prolong the detention of children violate the *Flores* Agreement, conflict with statutory authority, and violate due process, as well causing grave and unnecessary harm to the health and well-being of children.

**2. The Rule Eliminates State Licensing Protections and Fails to Ensure that Children Are Placed in the Least Restrictive Setting Appropriate to their Ages and Special Needs**

102. One of the *Flores* Agreement’s core principles is that immigration authorities shall treat all children in custody “with dignity, respect and special concern for their vulnerability as minors,” and “shall place each detained minor in the least restrictive setting” appropriate to his or her age and special needs that is consistent with securing the child’s presence in his or her immigration proceedings. *Flores* Agreement ¶ 11.

103. In order to ensure that children in immigration custody were held in the least restrictive setting, according to evolving child welfare standards, the *Flores* Agreement’s threshold condition for placement of immigrant children is that their residential, group, or foster care programs be licensed by a *state* agency responsible for the care of dependent children. *Flores* Agreement ¶ 6.

104. States, who have traditionally had the sole purview over ensuring child welfare, have generally declined to license facilities for the detention of families. Indeed, the policies of most, if not all, states is to minimize the use of congregate care and place children in family settings. Even in group homes and shelters, state-licensed programs for dependent children allow children to attend public schools and participate in community life. While curfews and other parameters for limited independence apply, children in state-licensed care are not housed in “secure,” locked facilities except as necessary for the child’s safety or safety of others, or in connection with a juvenile offense. *See infra* ¶¶ 147-360.

105. In order to detain families, the Rule purports to create a system for federal “licensing” of family detention centers, contravening state policy that

1 disallows facilities for the residential care of children to operate without state  
2 licenses.

3 106. Moreover, far from requiring the thorough application, review,  
4 permitting, and enforcement processes required for state licensing of child  
5 residential care, the Rule provides simply that “DHS shall employ an entity outside  
6 of DHS that has relevant audit experience to ensure compliance with the family  
7 residential standards established by ICE,” that audits “shall take place at the  
8 opening of a facility and on a regular, ongoing basis thereafter,” and that DHS will  
9 make the audit results available to the public. 84 Fed. Reg. 44,526 (to be codified  
10 at 8 C.F.R. § 236.3(b)(9)).

11 107. Unlike state licensing requirements, which, as described further below,  
12 are codified in state law and regulation, ICE Residential Standards do not create  
13 enforceable rights for detainees and nothing prevents ICE from changing its Family  
14 Residential Standards in the future. Currently, the ICE Residential Standards do  
15 not include the minimum standards for licensed programs or facilities enumerated  
16 in Exhibit 1 of the *Flores* Agreement.

17 108. Although the Rule states that a child in DHS custody shall be held in a  
18 “non-secure” facility absent probable cause of criminal or delinquent activity,  
19 unacceptably disruptive conduct within a “licensed” facility, or posing an escape  
20 risk or threat to his own safety, the Rule’s limits application of state law  
21 requirements to when the term “non-secure,” is specifically defined under state law.  
22 See 84 Fed. Reg. 44,527 (to be codified at 8 C.F.R. § 236.3(i)(1) (grounds for  
23 placement of child in secure facility)); 84 Fed. Reg. 44,526 (to be codified at 8  
24 C.F.R. § 236.3(b)(11) (definition of “non-secure facility”)). Moreover, DHS  
25 concedes that current family detention facilities do not offer freedom of ingress and  
26 egress that many states facilitate for children in residential placements. See 84 Fed.  
27 Reg. 44,486 (residents in family detention facilities “can exit them” but “doing so .  
28 . . may give rise to arrest”).

1           109. The Rule allows for the detention of children who can be held in  
2 secure custody in “a secure DHS detention facility, or DHS contracted facility  
3 having separate accommodations for minors,” which appears to allow DHS  
4 detention of children *without* their parents in a secure adult facility, outside the  
5 contemplation of the *Flores* Agreement and unsupported by Defendants’ claimed  
6 interest in detaining family units together. 84 Fed. Reg. 44,528 (to be codified at 8  
7 C.F.R. § 236.3(i)(1)).

8           110. The Rule’s reliance on private contractors to provide oversight of  
9 family detention facilities and secure facilities in which DHS may detain children  
10 raises serious concerns, as the DHS Office of Inspector General has found ICE  
11 detention standards enforcement inspections to be insufficient to “ensure consistent  
12 compliance with detention standards” or “promote comprehensive deficiency  
13 corrections.” DHS, *ICE’s Inspections and Monitoring of Detention Facilities Do*  
14 *Not Lead to Sustained Compliance or Systemic Improvements*, OIG-18-97 (June 26,  
15 2018), [https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-](https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf)  
16 [Jun18.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf).

17           111. The Rule also departs from the requirements of the *Flores* Agreement  
18 to transfer a child to a licensed placement within five days and of the TVPRA to  
19 place unaccompanied children promptly in the least restrictive setting consistent  
20 with their best interests by allowing ORR to hold unaccompanied children  
21 indefinitely in unlicensed and/or secure facilities if there is “no appropriate licensed  
22 program immediately available,” 84 Fed. Reg. 44,531(to be codified at 8 C.F.R.  
23 § 410.201(e)), and permitting the placement of unaccompanied children in  
24 unlicensed facilities in the event of an emergency or influx, 84 Fed. Reg. 44,531(to  
25 be codified at 8 C.F.R. § 410.202). These allowances can have devastating  
26 consequences as unlicensed facilities lack standards and oversight critical to  
27 protecting children’s health and safety, and unnecessary placement in secure  
28 facilities is contrary to the best interests of children.

112. The *Flores* Agreement requires that a child in removal proceedings be “afforded a bond redetermination hearing . . . in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.” *Flores* Agreement ¶ 24A. The purpose of these hearings is external review of “whether a child should remain detained or in a particular placement,” and “[f]or minors in secure detention, bond hearings . . . provide an opportunity to contest the basis of such confinement” and “ensure that [unaccompanied minors] are not held in secure detention without cause.” *Flores v. Sessions*, 862 F. 3d at 876-77, 868.

113. Although the Rule requires that children be given notice of the reason for their placement in a secure or staff secure facility, the Rule provides no mechanism for children to challenge their placement in such facilities. 84 Fed. Reg. 44,532 (to be codified at 8 C.F.R. § 410.206). The Rule replaces a bond redetermination hearing before an immigration judge with a so-called “810 hearing.” However, unlike a bond redetermination hearing, the Rule states that an 810 hearing “may not be invoked to determine the UAC’s placement while in HHS custody” or “to determine level of custody for the UAC.” 84 Fed. Reg. 44,535 (to be codified at 8 C.F.R. § 410.810(h)).

114. In addition to undermining children’s rights to release and to the least restrictive placement under the *Flores* Agreement, the Rule codifies and expands USCIS’s recent change in policy and practice regarding the re-evaluation of a child’s status as accompanied or unaccompanied. Under the Rule, a child who arrived unaccompanied will lose that status based on the availability of a parent or guardian to provide care and physical custody or reaching the age of 18. 84 Fed. Reg. 44531 (to be codified at 45 C.F.R. § 410.101). Once a child has been determined to be unaccompanied, he or she is entitled to certain protections under the TVPRA, including, for example, an exemption from the one-year filing deadline for an asylum claim. Removing those protections disadvantages children

1 in their removal or asylum hearing processes, and is inconsistent with  
2 Congressional intent.

### 3 **3. The Rule Removes Oversight Mechanisms and Introduces** 4 **Provisions that Render Key Protections Unenforceable**

5 115. In addition to weakening the protections afforded to children under the  
6 *Flores* Agreement and the TVPRA, the Rule removes oversight and enforcement  
7 mechanisms that have been critical to ensuring that Defendants comply with their  
8 legal obligations to children in their custody.

9 116. Unlike the *Flores* Agreement, which was enforceable through  
10 individual actions in federal district court, the regulations promulgated by the Rule  
11 are not even framed as mandatory requirements. Instead, language that is  
12 mandatory in the *Flores* Agreement has been replaced with descriptive or  
13 permissive language. For example, where the *Flores* Agreement requires that “the  
14 INS *shall* release a minor from its custody without unnecessary delay,” *Flores*  
15 Agreement ¶ 14 (emphasis added), the corresponding language in the Rule states  
16 that a “minor *may* be released.” 84 Fed. Reg. 44,525 (to be codified at 8 C.F.R.  
17 § 212.5(b)(3)(i)). Where the *Flores* Agreement requires that Defendants “*shall*  
18 place each detained minor in the least restrictive setting,” *Flores* Agreement ¶ 11  
19 (emphasis added), the corresponding language in the Rule states that “ORR places  
20 each UAC in the least restrictive setting.” 84 Fed. Reg. 44,531(to be codified at  
21 § 410.201).

22 117. Under the *Flores* Agreement, children are permitted to challenge  
23 Defendants’ decision to place them in a particular type of facility and the conditions  
24 in the facility in which they are placed in the United States District Court with  
25 jurisdiction over the facility. The Rule removes this element of the *Flores*  
26 Agreement.

27 118. The *Flores* Agreement provides for robust oversight of conditions by  
28 counsel for *Flores* plaintiffs, including through access to facilities and monthly data



1 reports. Despite the fact that this oversight has been crucial to holding Defendants  
2 to the requirements of the *Flores* Agreement, the Rule provides no similar  
3 mechanism for oversight by an outside body. In particular, the Rule makes no  
4 provision for continuing external oversight of CBP's compliance with the  
5 requirement to hold children in facilities that are safe, sanitary, and consistent with  
6 their particular vulnerability, despite CBP's well-documented failures in this area.

7 119. The Rule redefines "emergency" to include "an act or event [. . . that]  
8 impacts other conditions provided by this section." 84 Fed. Reg. 44,526 (to be  
9 codified at § 236.3(b)(5)). The Rule indicates that this change was made to permit  
10 DHS and HHS to "delay compliance" or "excuse noncompliance" with provisions  
11 of the rule—including basic health and safety requirements, such as the  
12 requirements to provide children with food, drinking water, and adequate  
13 temperature control. 84 Fed. Reg. 44,451. It could also permit DHS to house  
14 unaccompanied children with unrelated adults for more than 24 hours, which is  
15 explicitly prohibited by the *Flores* Agreement.

16 **B. Defendant Agencies Did Not Comply with Well-Established**  
17 **Requirements for Reasoned Decision-Making.**

18 120. In addition to issuing a Rule that conflicts with a binding settlement  
19 agreement and exceeds the Defendant agencies' statutory authority, the agencies'  
20 decision-making process gave insufficient consideration to critical issues and relied  
21 on improper premises and assertions that lack plausibility and consistency.

22 121. For example, Defendants failed to consider any of the benefits of the  
23 *Flores* Agreement favoring release over detention, holding children in the least  
24 restrictive setting, and using state licensing to ensure the safety and well-being of  
25 children in federal immigration custody.

26 122. Defendants also failed to assess—at all—the devastating impact that  
27 the Rule's failure to fully comply with the terms of the *Flores* Agreement will have  
28

1 on children, their families, the States, and the local communities that will welcome  
2 the children and their families upon release.

3 123. Similarly, while Defendant agencies attempted to justify eliminating  
4 core protections in the *Flores* Agreement on the basis of changed circumstances,  
5 they also claimed strict adherence to terms of the *Flores* Agreement to decline  
6 changes recommended by commenters to the NPRM. *See, e.g.*, 84 Fed. Reg.  
7 44,462-463.

8 124. DHS's failure to adopt standards ensuring safe and sanitary conditions  
9 for children in CBP custody is one example. Many commenters raised concerns  
10 about medical neglect, icy temperatures, lack of bedding, and constant illumination  
11 in CBP facilities. But the agencies dismissed these concerns as irrelevant because  
12 DHS had adopted the language of the *Flores* Agreement to require that such  
13 facilities maintain conditions that are "safe and sanitary and that are consistent with  
14 DHS's concern for [children's] particular vulnerability." *See, e.g.*, 84 Fed. Reg.  
15 44,438-39, 44,527 (to be codified at 8 C.F.R. § 236.3(g)(2)). The agencies'  
16 continued assertion that CBP facilities *are* safe and sanitary despite an  
17 administrative record citing media and expert reports of dangerous conditions for  
18 children reveals the agencies' willingness to ignore the evidence in the record  
19 before them.

20 **1. The Rule Is Based on a False and Impermissible Premise:**  
21 **That Civil Detention Will Deter Migration**

22 125. The Rule makes inferences based on migration trends that family  
23 detention has a deterrent effect on migration. But this analysis wrongly attributes a  
24 policy-based causal relationship to different rates of migration that are seasonal in  
25 nature. A proper analysis of publicly available border apprehension data showed no  
26 effect that could be attributed to United States family detention or family separation  
27 policies. Although commenters pointed out this mistake to Defendants DHS and  
28 HHS in the notice-and-comment process, the agencies continued to rely on their

1 flawed statistical analysis to issue the Rule.

2 126. Moreover, deterrence is a constitutionally impermissible justification  
3 for civil detention, which is permitted only to secure an individual's presence at a  
4 hearing or protect the community from harm.

5 **2. Defendant Agencies Failed to Fully Address Harms**  
6 **Created by Expanding Detention of Children and Families**

7 127. In promulgating the Rule, Defendants declined to balance the  
8 government's interest in prolonging the detention of children for enforcement  
9 purposes against the physical health and mental health effects on children and  
10 families, as well as the cost of such injuries to the communities they will join upon  
11 release.

12 **a. Detention Is Extremely Harmful to Children**

13 128. Detention or institutionalized living is a major childhood traumatic  
14 stressor that causes long-term psychological harm.

15 129. Conditions in family detention facilities do not allow parents and  
16 children to engage in the normal family dynamics that are important for child and  
17 adolescent development. Families in immigration detention have reported being  
18 subject to punitive and verbally abusive treatment. They also report being restricted  
19 from spending time together; adolescents may be assigned cells apart from their  
20 parents and be punished if they are found in their parent's cell at the time of the  
21 census count that occurs several times a day.

22 130. Detaining families undermines familial roles, disrupting emotional  
23 attachment, parental authority, and children's security in their parents' power to  
24 care for them. Studies have shown that infants and children who live in detention  
25 with their mothers often have more maladaptive social and emotional development,  
26 academic failure, and future criminal involvement compared to other children.  
27 Childhood trauma from maternal incarceration increases depressive symptoms in  
28 children and results in increased risks for dropping out of high school, depression,

1 social withdrawal, and externalizing behaviors such as aggression and defiance.

2 131. Institutional rearing—that is, growing up in detention for even short  
3 periods of time whether youth are incarcerated with their parents or in youth  
4 facilities—is one of the most adverse environments scientists have studied,  
5 involving powerful elements of trauma: deprivation (i.e. absence of  
6 developmentally appropriate environmental inputs and complexity) and threat  
7 (experiences that represent an immediate or ongoing threat to physical integrity and  
8 psychological security). These traumatic elements cause prolonged and intense  
9 stress, affecting neural development which in turn harms cognitive and behavioral  
10 functioning in children and contributes to the development of chronic illnesses that  
11 can last into adulthood.

12 132. Children and adolescents in immigration detention facilities report  
13 increased rates of deliberate self-harm and suicidal behavior, severe depression,  
14 sleep difficulties, anxiety, and PTSD, along with poor nutrition, regression in  
15 language development, bedwetting, and social withdrawal.

16 133. Parents and children in ICE’s family detention facilities have shown  
17 high levels of anxiety. Children in these facilities suffer from separation anxiety,  
18 depression, and feelings of despair that manifest as developmental regression and  
19 major psychiatric disorders, including suicidal ideation. Moreover, the ongoing  
20 stress, despair, and uncertainty of family detention specifically compromises  
21 children’s intellectual and cognitive development and contributes to the  
22 development of chronic illness in ways that may be irreversible. Prolonged family  
23 detention puts children at risk of recurrent and distressing memories, nightmares,  
24 dissociative reactions, prolonged psychological distress, and negative alterations in  
25 cognition.

26 134. Both state child welfare policy and federal policy recognize that  
27 family-based care is better for children than institutionalized care. *See* Family First  
28 Prevention Services Act, Pub. L. 115-123, 132 Stat 64 (2018) (limiting federal

1 payments for out-of-home placements that are not foster homes).

2 135. In response to many comments, including comments from medical,  
3 mental health, and child welfare specialists opposing the NPRM based on concerns  
4 about the impact family detention will have on children and their families, DHS  
5 cited mental health services contemplated within the detention system and  
6 responded, “Enforcement of the immigration laws is a core DHS mission that  
7 cannot be ignored and must be balanced with the needs to ensure the care of minors  
8 in DHS custody and relevant legal obligations.” 84 Fed. Reg. 44,504.

9 **b. The Agencies Are Aware of Less Restrictive Means to**  
10 **Ensure Families Participate in their Immigration**  
**Proceedings**

11 136. Contrary to Defendants’ contention in the Rule, detention of families is  
12 unnecessary to secure their appearance at hearings. Sound analysis of  
13 governmental data demonstrates that the overwhelming majority of families appear  
14 and participate in immigration court, and that the appearance rate is even higher  
15 where an immigrant is represented by counsel. *See, e.g.,* Am. Immigr. Council,  
16 *Immigrants and Families Appear in Court: Setting the Record Straight* (July 2019),  
17 [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrant](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_and_families_appear_in_court_setting_the_record_straight.pdf)  
18 [s\\_and\\_families\\_appear\\_in\\_court\\_setting\\_the\\_record\\_straight.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_and_families_appear_in_court_setting_the_record_straight.pdf). Moreover,  
19 Defendants’ reliance on *in absentia* rates to attempt to justify prolonged detention  
20 of immigrant children and families is misplaced, as *in absentia* rates are not a  
21 reliable measurement of whether a family will appear in immigration court.

22 137. In a memorandum dated May 11, 2005, ICE announced criteria for  
23 eligibility for enrollment in the Intensive Supervision Appearance and Electronic  
24 Monitoring Device Programs as alternatives to detention. DHS, *Eligibility Criteria*  
25 *for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the*  
26 *Electronic Monitoring Device (EMD) Program* (May 11, 2005),  
27 [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/dropolicymemoeligibilityfordr](https://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf)  
28 [oisapandemdprograms.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf). These programs use supervision tools such as curfews

1 and electronic monitoring devices for individuals subject to, but released from,  
2 immigration detention. The Intensive Supervision Appearance and Electronic  
3 Monitoring Program includes community-based supervision and case management  
4 that result in high rates of immigration court respondents released from detention  
5 appearing for their immigration court hearings.

6 138. In September 2015, ICE established the Family Case Management  
7 Program, with plans to enroll a maximum of 1500 families in five targeted  
8 metropolitan locations. The program was geared toward special populations, such  
9 as pregnant women, nursing mothers, and families with young children. As of  
10 March 2017, ICE expended \$17.5 million in program costs to enroll 781 active  
11 participants, for a cost of about \$36 per family per day. The program resulted in 99  
12 percent compliance for ICE check-ins and appointments and 100 percent attendance  
13 at court hearings. By contrast, the cost per bed in family detention is \$319.37 per  
14 day.

15 139. Programs like the Family Case Management Program are therefore  
16 proven cost-effective and less restrictive alternatives to detention in meeting the  
17 government's objective of ensuring appearance at hearings. Many commentators  
18 called on DHS to use these kinds of programs rather than undertaking the human  
19 and financial cost of family detention.

20 140. ICE's Congressional Justification and Budget Overview for Fiscal  
21 Year 2018 included the Family Case Management Program as one of several  
22 Alternatives to Detention programs. DHS, *U.S. Immigration and Customs*  
23 *Enforcement Budget Overview*, (Fiscal Year 2018) pp. 182-183,  
24 <https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf>.  
25 However, ICE ended the Family Case Management Program in the summer of  
26 2017.

1                   **3. The Agencies Failed to Consider Allowing Parents to**  
 2                   **Determine Their Children's Best Interests**

3           141. The Rule cites concerns about family separation as a basis for  
 4 prohibiting the release of accompanied children to non-parent, non-guardian  
 5 sponsors required by the *Flores* Agreement. But Defendants were aware that any  
 6 parents who preferred to remain with their children in a family detention facility  
 7 could waive their children's rights under the *Flores* Agreement, because the option  
 8 was thoroughly explored in litigation concerning family separation. *See Ms. L. v.*  
 9 *U.S. Immigration and Customs Enf't*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

10          142. Defendants failed to provide a reasoned basis for terminating  
 11 accompanied children's rights to release to an alternate care-giver, instead of  
 12 continuing to allow parents the option of either allowing release to an alternate  
 13 care-giver or keeping the family together while detained.

14                   **4. The Agencies Failed to Conduct an Analysis of Costs**  
 15                   **Associated with the Rule**

16          143. Executive Orders 12866 (*Regulation and Regulatory Review*) and  
 17 13563 (*Improving Regulation and Regulatory Review*) require that agencies provide  
 18 a detailed cost-benefit analysis for proposed rules that are economically significant,  
 19 including an assessment of "potentially effective and reasonably feasible  
 20 alternatives to the planned regulation."

21          144. In the NPRM, DHS and HHS stated that they did not consider the Rule  
 22 economically significant. 83 Fed. Reg. 45,522. In the Rule, DHS concedes that the  
 23 Rule may result in costs, benefits, or transfers in excess of \$100 million in any  
 24 given year and is therefore economically significant. 84 Fed. Reg. 44,505.

25          145. The agencies failed to conduct the cost-benefit analysis and  
 26 consideration of alternatives that is required for an economically significant rule.

27          146. Given the cost effectiveness of the Family Case Management Program  
 28 and other supervised release programs as compared to immigration detention, the  
 Rule's failure to require individualized bases for detention, and the harms attendant



1 to the incarceration of children and families, the costs far outweigh the benefits of  
2 the Rule.

3 **VII. THE RULE UNDERMINES STATES' SOVEREIGN INTERESTS IN SETTING**  
4 **STANDARDS FOR RESIDENTIAL CARE OF DEPENDENT CHILDREN**

5 147. The Rule undermines the States' sovereign interests in enforcing their  
6 child welfare laws by setting up an alternative federal licensing scheme that allows  
7 children to be held in the respective States without State oversight as needed to  
8 ensure access to education, safety, and health in accordance with State law.

9 **A. California's Policy, Licensing, and Enforcement of Protections**  
10 **for Children Far Exceed Those Provided by the Rule**

11 148. California has licensed and monitored residential placements for  
12 children as part of its child welfare system since 1973. The State has a  
13 comprehensive licensing scheme for all placements used to house children within  
14 its boundaries, which is contained in the California Health and Safety Code, the  
15 California Welfare and Institutions Code, and Title 22 of the California Code of  
16 Regulations.

17 149. As a matter of state policy, California seeks to prevent and reduce  
18 inappropriate institutional care for children by providing community-based care,  
19 home-based care, or other forms of less intensive care. Cal. Welf. & Inst. Code  
20 § 13003(4). Any out-of-home placement of children must be in the "least  
21 restrictive family setting," and should promote "normal childhood experiences that  
22 [are] suited to meet the child's or youth's individual needs." *Id.* § 16000(a). Under  
23 California law, children may not be placed in locked facilities except under very  
24 limited circumstances where a court has made specific findings regarding their  
25 danger to self or others.

26 150. California has adopted "continuum of care" policies that minimize the  
27 use of congregate care facilities in favor of home-based placements. This system  
28 relies on specialized care services being brought to resource family homes (known  
outside of California as "foster" care homes), reserving the use of group homes for

1 specialized and temporary needs—for intervention rather than long-term placement.  
2 California’s foster family agencies and county child welfare agencies are  
3 responsible for certifying or approving resource family homes.

4 151. The California Department of Social Services is responsible for  
5 ensuring the health, safety, and welfare of children in out-of-home care facilities,  
6 which includes ensuring that children’s statutory and regulatory personal rights are  
7 effectuated, including their rights to fair and equal treatment and to all available  
8 services, care, treatment, placements, and benefits.

9 152. California’s child welfare responsibilities include licensing and  
10 monitoring the residential conditions of children under state care who have pending  
11 civil immigration proceedings. The state licenses all group homes and foster family  
12 agencies in California, including those that have contracts with ORR to provide  
13 housing to unaccompanied children in federal custody. California currently  
14 licenses and monitors at least sixteen group homes and at least four foster family  
15 agencies with federal contracts to house immigrant children pending their  
16 immigration proceedings.

17 153. To prevent predictable harm to children in care, California provides  
18 orientation prior to licensure, screens applicants, performs background checks,  
19 reviews staffing requirements, conducts pre-licensing visits to inspect facilities, and  
20 provides information regarding laws and regulations. California provides  
21 consultation, education, and technical support, and monitors compliance with state  
22 child welfare standards through unannounced facility inspections. The California  
23 Department of Social Services investigates complaints and enforces standards  
24 through notices of deficiency, fines, civil penalties, non-compliance office  
25 conferences, and administrative legal actions that can lead to license revocation.

26 154. California prohibits persons and entities from operating community  
27 care facilities, which includes child residential programs and the foster family  
28 agencies that place children in resource family homes, without a license. *See, e.g.*

1 Cal. Health & Safety Code § 1508. Operation without a license can lead to criminal  
2 prosecution and/or civil proceedings. *See, e.g.* Cal. Code Regs. tit. 22, § 80006(c).

3 155. Neither the Rule nor ICE's Residential Standards require the  
4 development of individualized plans to support each child's development, as  
5 required by the *Flores* Agreement and California law.

6 156. The Rule and ICE's Residential Standards fail to allow children  
7 independence appropriate to their age, maturity, and capability—including the right  
8 to leave the facility in which they are housed—as required by California law.

9 157. California does not have a statutory or regulatory licensing scheme for  
10 facilities that detain family units with adult parents or guardians. Accordingly,  
11 there are no such facilities in California.

12 158. By creating an alternate licensing scheme to allow family detention in  
13 locked facilities in California—to be overseen by a federal contractor rather than  
14 the California Department of Social Services and with standards far short of those  
15 required for facilities licensed for the care of dependent children under California  
16 law—the Rule undermines California's ability to enforce its state laws and  
17 procedures for ensuring child welfare.

18 159. In addition, because of the Rule, children who otherwise might have  
19 been placed in California-licensed care will be held in federal family detention  
20 facilities either within or outside of California.

21 **B. The Rule Conflicts with Massachusetts's Child Welfare Policy,**  
22 **Licensing, and Enforcement**

23 160. Massachusetts statutes and regulations establish criteria and a  
24 comprehensive scheme to license and monitor out-of-home foster placements for  
25 children within its boundaries, set forth at Chapters 15D, 18B, and 119 of the  
26 Massachusetts General Laws and Titles 110 and 606 of the Code of Massachusetts  
27 Regulations. The Massachusetts Department of Early Education and Care is  
28 responsible for licensing and monitoring residential programs serving children,

1 while the Massachusetts Department of Children and Families guides the  
2 implementation of child welfare policy for the state and oversees children in state  
3 custody who have suffered abuse or neglect.

4 161. It is the policy of Massachusetts to ensure that children have “a fair  
5 and full opportunity to reach [their] full potential.” Mass. Gen. Laws ch. 15D, § 1.  
6 The Massachusetts Department of Children and Families requires that placement  
7 decisions serve “the best interests of the child.” 110 Mass. Code Regs. 7.101(1).  
8 Accordingly, Massachusetts Department of Children and Families placement  
9 determinations consider “the least restrictive setting for the child,” the “ability for  
10 frequent visits between [the] child and his/her family,” and “the child’s individual  
11 needs.” *Id.*

12 162. Massachusetts law discourages the use of group residential facilities.  
13 Children in the state’s child welfare system who need foster care are placed with  
14 individual families unless the particular needs of that child merit placement in a  
15 school or institution. Mass. Gen. Laws ch. 119, § 32. Prior to making a placement  
16 in a group residential facility, the Massachusetts Department of Children and  
17 Families must first consider placement with relatives, with a “child-specific” family  
18 with some relationship to the child, in a foster home, or in a short-term group home,  
19 in that order of priority. *See* 110 Code Mass. Regs. 7.101(2).

20 163. The Massachusetts Department of Early Education and Care has  
21 adopted regulations governing the licensure of all group residential care facilities  
22 for children, whether in state or federal custody.

23 164. For children in group residential care, Massachusetts seeks to “provide  
24 each resident with the least intrusive intervention sufficient to insure his or her  
25 safety, the safety of others, and promote healthy growth and development.”  
26 606 Code Mass. Regs. 3.01(e).

27 165. Massachusetts Department of Early Education and Care regulations for  
28 group residential care programs prohibit locking features even for rooms used for

1 the specific purpose of behavioral management and separation. 606 Code Mass.  
2 Regs. 3.07(7)(l).

3 166. Through its licensure regulations, the Massachusetts Department of  
4 Early Education and Care is responsible for ensuring the health, safety, and welfare  
5 of children in out-of-home care facilities in the child welfare system, which  
6 includes requiring that programs guarantee fair and equal access to all services and  
7 maintain procedures for protecting children in their care. *See, e.g.*, 606 Code Mass.  
8 Regs. 3.04(3)(l). By screening applicants, *see* Mass. Gen. Laws ch. 15D, § 6,  
9 performing background checks, *id.* § 7(a), providing consulting and technical  
10 assistance, *id.* § 2(o)-(p), conducting unannounced inspections, *id.* §§ 9, 16, and  
11 employing other measures, Massachusetts prevents harm and protects children in its  
12 care. The Massachusetts Department of Early Education and Care investigates  
13 compliance and enforces standards through sanctions, including fines and  
14 suspension, revocation, and nonrenewal of licenses. *See id.* § 10.

15 167. The responsibilities of the Massachusetts Department of Early  
16 Education and Care include overseeing the residential conditions of children in  
17 federal or state custody who have pending civil immigration proceedings and where  
18 no option for community release has been identified pursuant to the *Flores*  
19 Agreement. Massachusetts currently licenses and monitors one federally contracted  
20 foster agency which oversees placements for children in immigration proceedings  
21 who are in federal custody.

22 168. Massachusetts prohibits persons and entities from operating residential  
23 facilities or agencies that place children in residential facilities without a license.  
24 *See* Mass. Gen. Laws ch. 15D, § 6. Operation without a license can lead to fines or  
25 imprisonment, or both. *See id.* § 15(a).

26 169. Massachusetts regulations mandate that each resident have a  
27 comprehensive individual service plan, 606 Code Mass. Regs. 3.05(4), whereas  
28 neither the Rule nor ICE's Residential Standards contain such a requirement.

170. Massachusetts regulations mandate the minimum size of living quarters, 606 Code Mass. Regs. 3.08(7)(e), a requirement not contemplated in the Rule or ICE's Residential Standards.

171. Contrary to ICE's Residential Standards, Massachusetts regulations require referrals for family planning services. 606 Code Mass. Regs. 3.06(4)(g)(4).

172. Massachusetts regulations require that residential programs put in place a family visiting plan for each resident, an affirmative commitment to visitation by family and others not included in the Rule or ICE's Residential Standards. 606 Code Mass. Regs. 3.06(2)(a)(4).

173. Massachusetts does not have a statutory or regulatory licensing scheme for facilities that detain family units with adult parents or guardians. Accordingly, there are no such facilities in Massachusetts.

174. By creating an alternate licensing scheme to allow family detention in locked facilities in Massachusetts—to be overseen by a federal contractor rather than the Massachusetts Department of Early Education and Care and with standards far short of those required for dependent children under Massachusetts law and regulations—the Rule undermines Massachusetts's ability to effectuate state policy and enforce state laws and regulations for ensuring child welfare.

175. In addition, because of the Rule, children who otherwise may have been placed in Massachusetts-licensed care will be held in federal family detention facilities either within or outside of Massachusetts.

### **C. The Rule Conflicts with Connecticut's Child Welfare Policy, Licensing, and Enforcement**

176. Connecticut believes that children should grow up in their own homes and communities wherever possible. The state's Department of Children and Families, which cares for children in the abuse and neglect system, has developed and deployed a "Strengthening Families Practice Model" —a trauma-informed, strength-based approach that seeks to improve child well-being by engaging and

1 supporting families. *See, e.g.,* Conn. Dep’t of Child. & Fam., *Strengthening*  
2 *Families Practice Model*, Pol’y 1-2 (Jan. 2, 2019). Connecticut treats removal of  
3 children from the home as a last resort, to be used only when removal is deemed  
4 necessary for the child’s safety and when other interventions have failed.

5 177. In line with its commitment to providing developmentally appropriate  
6 supports and services to children in their own homes and communities,  
7 Connecticut’s official policy is to “[p]rovide programs and services that are  
8 community-based” and to “[r]etain and support” young people “within their homes  
9 whenever possible and appropriate.” Conn. Office of Pol’y and Mgmt., *Juvenile*  
10 *Justice System: System Philosophy and Goals*, [https://portal.ct.gov/OPM/CJ-](https://portal.ct.gov/OPM/CJ-JJYD/Main-Navigation/Juvenile-Justice-System)  
11 *JJYD/Main-Navigation/Juvenile-Justice-System* (last visited Aug. 21, 2019).

12 178. When it is deemed necessary to place children in the care and custody  
13 of the state, Connecticut strives to keep them healthy, safe, and learning. To further  
14 that objective, Connecticut has developed and implemented a mandatory, exclusive,  
15 and comprehensive system for licensing and monitoring residential placements of  
16 children.

17 179. In Connecticut, it is illegal to operate a residential placement for  
18 children—including congregate care facilities, residential treatment facilities, and  
19 temporary shelters—without a license from the Department of Children and  
20 Families. Conn. Gen. Stat. § 17a-145(a). The Department licenses all of the state’s  
21 80 residential placements for children, including Connecticut’s only group home  
22 that contracts with ORR to house unaccompanied children in federal custody.

23 180. Connecticut has adopted a two-stage licensing process for residential  
24 facilities. Prior to granting a provisional license, the Department of Children and  
25 Families provides technical assistance to applicants; performs background checks;  
26 conducts a complete review of proposals; and inspects facilities. The Department  
27 of Children and Families conducts a full reassessment of each facility before  
28 converting a provisional license to a regular license. Finally, after licensure, the



1 Department of Children and Families provides ongoing consultation, education, and  
2 technical support, and monitors compliance with regulatory standards through both  
3 regular quarterly visits and unannounced facility inspections.

4 181. Connecticut's licensing system's safety, health, and quality  
5 requirements for residential placements are detailed and specific, and strive to  
6 embody nationally-accepted best practices in caring for vulnerable children. In  
7 critical areas, ICE's Residential Standards fall short of the standards embodied in  
8 Connecticut's system for the care and custody of out-of-home children.  
9 Connecticut law and regulations require that children are provided with a range of  
10 services and supports that are not required by the Rule or ICE's Residential  
11 Standards, and Connecticut guarantees children a range of rights and freedoms on  
12 which ICE's standards are silent. For example, Connecticut law and policies  
13 require that transgender youth are housed in residential placements according to  
14 their gender identities, and not according to the sex that they were assigned at birth.  
15 The Rule and ICE's Residential Standards do not similarly protect the rights of  
16 transgender youth.

17 182. Connecticut does not have a statutory or regulatory licensing scheme  
18 for facilities that detain family units with adult parents or guardians. Accordingly,  
19 there are no such facilities in Connecticut.

20 183. By creating an alternate licensing scheme to allow family detention in  
21 locked facilities in Connecticut—to be overseen by a federal contractor rather than  
22 the Connecticut Department of Children and Families and with standards far short  
23 of those required for dependent children under Connecticut law—the Rule  
24 undermines Connecticut's ability to enforce its state laws and procedures for  
25 ensuring child welfare.

26 184. In addition, because of the Rule, children who otherwise might have  
27 been placed in Connecticut-licensed care will be held in federal family detention  
28 facilities either within or outside of Connecticut.

**D. The Rule Conflicts with Delaware’s Child Welfare Policy, Licensing, and Enforcement**

185. The Delaware Department of Services for Children, Youth, and Their Families includes the Division of Family Services, the Division of Youth Rehabilitative Services, and the Division of Prevention and Behavioral Health Services. The Delaware Department of Services for Children, Youth, and Their Families uses a continuum of care to provide services to children throughout the State of Delaware who are dependent, neglected, abused, delinquent, or in need of mental health services, and strives to safeguard the welfare of children by providing services to children and families in the least restrictive environment possible, in accordance with the child’s health and safety needs. *See* Del. Code Ann. tit. 29 § 9001.

186. When circumstances require the Delaware Department of Services for Children, Youth, and Their Families to remove a child from their home for placement in an out-of-home setting, State policy requires the Department to develop an individualized written case plan for that child. The case plan must outline the child’s needs, the services provided to the child and family, and a plan for placement of the child “in the least restrictive setting available and in close proximity to the child’s home, consistent with the best interests and special needs of the child.” Del. Code Ann. tit. 29 § 9003(a)(4). When determining placement options for the child, the Division of Family Services must first attempt to locate a relative placement resource. If no relatives are available, non-relative resources are explored before placing a child in a foster home. Group home settings are considered only if no foster home placements are available or appropriate. Per Division of Family Services policy, the child’s age, relationship with their parents and siblings, and their physical, emotional, and intellectual composition are all factors used to determine the best placement for the child, in the least restrictive setting.

1           187. Delaware law prohibits children from being placed in secure facilities  
2 unless specific judicial findings are made to address the mental health needs of the  
3 child or as part of the delinquency proceedings of the child. *See, e.g.*, Del. Code  
4 Ann. tit. 10 § 1007, *id.* tit. 16, §§ 5001-5011.

5           188. The Delaware Department of Services for Children, Youth, and Their  
6 Families is responsible for licensing, registering, and monitoring all residential and  
7 nonresidential child care facilities in Delaware, as well as child placement and  
8 adoption agencies. The Division of Family Services Office of Child Care  
9 Licensing licenses and provides regulations for child placing agencies, residential  
10 child care facilities, day treatment programs, and nonresidential facilities.  
11 Delaware's monitoring scheme includes, among other things, the right of entrance,  
12 inspection, and access to the papers of child care facilities operating within  
13 Delaware and entities that operate within Delaware and place children in other  
14 states.

15           189. Delaware prohibits persons and entities from operating community  
16 care facilities, which includes residential and non-residential child care facilities  
17 without a license. *See, e.g.*, Del. Code Ann. tit. 31, § 344. The Office of Child  
18 Care Licensing's regulations focus on protecting the well-being, safety, and health  
19 of children. They include requirements for background checks, child protection  
20 registry checks, ensuring the good character and intention of the applicant, and that  
21 the home or facility meets the child's physical, social, moral, mental, and  
22 educational needs. *See, id.* § 344(b). If the licensee is non-compliant with the  
23 regulations, their license can be denied, suspended, or revoked.

24           190. Delaware law requires that all dependent, neglected, and abused  
25 children in the custody of the Department of Services for Children, Youth, and  
26 Their Families have individualized service plans and independent living and  
27 transition plans. The children are required to be active participants in the formation  
28 of such plans. Based on reasonable, prudent parent standards, Delaware children

1 are also required to have the opportunity to participate in age and developmentally  
 2 appropriate activities and experiences, outside of their placement, which promote  
 3 healthy development and allow for extra-curricular, social and cultural activities.  
 4 *See, e.g.*, Del. Code Ann. tit. 13, §§ 2502, 2522. These rights and freedoms are not  
 5 required by the Rule or available under ICE's Residential Standards.

6 191. Delaware does not have a statutory or regulatory licensing scheme for  
 7 facilities that detain family units with adult parents or guardians. Accordingly,  
 8 there are no such facilities in Delaware.

9 192. By creating an alternate licensing scheme to allow family detention in  
 10 locked facilities in Delaware—to be overseen by a federal contractor rather than the  
 11 Delaware Department of Services for Children, Youth, and Their Families and with  
 12 standards far short of those required for dependent children under Delaware law—  
 13 the Rule undermines Delaware's ability to enforce its state laws and procedures for  
 14 ensuring child welfare.

15 193. In addition, because of the Rule, children who otherwise may have  
 16 been placed in Delaware licensed care will be held in federal family detention  
 17 facilities either within our outside of Delaware.

#### 18 **E. The Rule Conflicts with the District of Columbia's Welfare** 19 **Policy, Licensing, and Enforcement**

20 194. The District's Child and Family Services Agency is responsible for  
 21 administering child and family services in the District, including by safeguarding  
 22 the rights and protecting the welfare of children whose parents, guardians, or  
 23 custodians are unable to do so and ensuring the protection of children who have  
 24 been abused or neglected from further such experiences and conditions detrimental  
 25 to their healthy growth and development. D.C. Code § 4-1303.01a.

26 195. The District's Child and Family Services Agency licenses all youth  
 27 residential facilities in the District except for those facilities intended primarily for  
 28 detained or delinquent youth or persons in need of supervision. D.C. Mun. Regs.

1 tit. 29, § 6202.4.

2 196. The District has a comprehensive licensing scheme for all placements  
3 used to house children within its boundaries. *See* D.C. Code § 4-1303.01a, et seq.;  
4 D.C. Code § 7-2101, et seq.; D.C. Mun. Regs. tit. 29, § 6201, et seq.; D.C. Mun.  
5 Regs. tit. 29, § 6301, et seq.

6 197. The District follows a policy of placing children in the least restrictive  
7 setting to meet their particular needs. D.C. Mun. Regs. tit. 29, § 6201.3. Under  
8 District law, children may not be placed in locked facilities except under very  
9 limited circumstances where a court has made specific findings regarding their  
10 danger to self or others. *See, e.g.*, D.C. Code § 2-1515.01, et seq.

11 198. The District has a robust system for ensuring meaningful oversight,  
12 accountability, and enforcement of standards for residential facilities that house  
13 children. D.C. Code §§ 7-2105 & 7-2108; D.C. Mun. Regs. tit. 29, § 6201, et seq.;  
14 D.C. Mun. Regs. tit. 29, § 6301, et seq.

15 199. To prevent harm to children in residential facilities, the District's Child  
16 and Family Services Agency provides orientation prior to licensure, screens  
17 applicants, reviews background checks submitted by providers, reviews staffing  
18 requirements, conducts pre-licensing visits to inspect facilities, and provides  
19 information regarding laws and regulations. The District provides consultation,  
20 education, and technical support, and monitors compliance with District child  
21 welfare standards through unannounced facility inspections. It also investigates  
22 regulatory complaints and enforces standards by reporting the agency's findings,  
23 which address any deficiencies, and which are reviewed with the operators, and  
24 administrative legal actions that can lead to license restrictions or suspension.

25 200. To ensure that children receiving care in a youth shelter, emergency  
26 care facility, or youth group home have the adequate supervision and care necessary  
27 for their well-being, on August 16, 2019, the District adopted emergency  
28 regulations that prohibit the licensing of group housing facilities for children that

1 house more than fifteen children at the same time. Vol. 66 No. 35 D.C. Reg.  
2 011502 (Aug. 23, 2019). The emergency regulations are in effect for 120 days,  
3 until December 14, 2019. *Id.* The regulations are subject to a thirty-day public  
4 comment period. *Id.*

5 201. The District prohibits persons and entities from operating child  
6 residential programs without a license. *See, e.g.*, D.C. Code § 7-2102. Operating a  
7 youth residential facility without a license or in violation of the terms of a license or  
8 impeding a District government employee in the performance of his or her duties  
9 under the Youth Residential Facilities Licensure Act or its implementing  
10 regulations can lead to criminal prosecution and/or civil proceedings. *See, e.g.*,  
11 D.C. Code Ann. § 7-2108.

12 202. Neither the Rule nor ICE's Family Residential Standards require the  
13 development of individualized plans to support each child's development, as  
14 required by the *Flores* Agreement and District law.

15 203. Neither the Rule nor ICE's Family Residential Standards allow  
16 children independence appropriate to their age, maturity, and capability—including  
17 the right to not be confined in the facility twenty-four hours a day.

18 204. The District does not have a statutory or regulatory licensing scheme  
19 for facilities that detain family units that detain children with adult parents.  
20 Accordingly, there are no such facilities in the District.

21 205. By creating an alternate licensing scheme to allow family detention in  
22 locked facilities in the District—to be overseen by a federal contractor rather than  
23 any District agency—the Rule undermines the District's ability to enforce its laws  
24 and procedures for ensuring child welfare.

25 206. In addition, because of the Rule, children who otherwise may have  
26 been placed in the District's licensed care will be held in federal family detention  
27 facilities either within or outside of the District.

28 207. The District is uniquely situated among the Plaintiff States, as it has no

1 sovereign interest to claim as against the Federal Government. *See* Const. art. I,  
 2 § 8, cl. 17; *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 76  
 3 (1982); *District of Columbia ex rel. Am. Combustion, Inc. v. Transamerica Ins. Co.*,  
 4 797 F.2d 1041, 1046 (D.C. Cir. 1986) (Congress acts “as sovereign of the District  
 5 of Columbia”). Rather, the District asserts its quasi-sovereign interests and its  
 6 authority to enforce its laws and uphold the public interest under its Attorney  
 7 General Act, which was intended to incorporate the common law authority of  
 8 states’ attorneys general. D.C. Code § 1-301.81. *See also Alfred L. Snapp & Son,*  
 9 *Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 608 n.15 (1982) (recognizing that  
 10 Puerto Rico “has a claim to represent its quasi-sovereign interests in federal court at  
 11 least as strong as that of any State”).

12 **F. The Rule Conflicts with Illinois’s Child Welfare Policy,**  
 13 **Licensing, and Enforcement**

14 208. In Illinois, the Illinois Child Care Act (passed in 1969) defines various  
 15 child care arrangements and sets minimum licensing, operation, and performance  
 16 standards for child care institutions. The Illinois Department of Children and  
 17 Family Services is charged with creating standards for, licensing, and overseeing all  
 18 child care institutions in Illinois. 225 Ill. Comp. Stat. 10/1 *et seq.*

19 209. The “primary and continuing responsibility” of the Illinois Department  
 20 of Children and Family Services is “to provide social services to children and their  
 21 families, to operate children’s institutions, and to provide certain other  
 22 rehabilitative and residential services.” 20 Ill. Comp. Stat. 505/1. Illinois requires  
 23 caregivers to consider “the best interest of the child,” “the importance and  
 24 fundamental value of encouraging the child’s emotional and developmental growth  
 25 gained through participation in activities in his or her community,” and “the  
 26 importance and fundamental value of providing the child with the most family-like  
 27 living experience possible.” 20 Ill. Comp. State. 505/7.3a(c)(2). Illinois  
 28 regulations limit placement of children in secure child care facilities to those who



1 are between the ages of 13 and 17 and to situations in which there is a documented  
2 clinical finding that the child's or youth's behavior poses an established pattern of  
3 foreseeable serious risk of bodily harm to self or others. Ill. Admin. Code tit. 89  
4 §§ 411.10, 411.110(g).

5 210. Illinois's Department of Children and Family Services has sole  
6 authority to license, monitor, and enforce standards for child care institutions. In  
7 Illinois, although requirements vary based on the type of facility, all prospective  
8 child care institutions must apply for a license to operate; the licensing process  
9 includes background checks for all operators and employees of the institution,  
10 monitoring by the Department of Children and Family Services, and proof of  
11 training and testing for lead and radon among many other requirements. In  
12 addition, the Department of Children and Family Services conducts annual  
13 monitoring visits to ensure child care institutions are in compliance with applicable  
14 state laws and regulations. If the state receives a complaint about a child care  
15 institution, it conducts an inspection/investigation and determines whether the  
16 complaint is substantiated and whether the issuance of a corrective action is  
17 warranted.

18 211. Illinois prohibits persons and entities from operating community care  
19 facilities, which includes child care institutions, without a license. *See, e.g.*, 225 Ill.  
20 Comp. Stat. 10/3.

21 212. Illinois laws and regulations require goods, services, and liberties that  
22 are not required by the Rule and are unavailable under ICE's Residential Standards  
23 be provided to children in child care institutions. For example, Illinois regulations  
24 require that personal allowance money be available to children based upon the  
25 child's age and ability to manage money. *Id.* § 404.33. Illinois regulations provide  
26 that children be permitted and encouraged to participate in extra-curricular  
27 activities including sports, art, and music to the extent of their interests, abilities,  
28 and talents. *Id.* § 404.34.

1           213. Illinois does not have a statutory or regulatory licensing scheme for  
2 facilities that detain family units with adult parents or guardians. Accordingly,  
3 there are no such facilities in Illinois.

4           214. By creating an alternate licensing scheme to allow family detention in  
5 locked facilities in Illinois—to be overseen by a federal contractor rather than the  
6 Illinois Department of Children and Family Services and with standards far short of  
7 those required for dependent children under Illinois law—the Rule undermines  
8 Illinois’s ability to enforce its state laws and procedures for ensuring child welfare.

9           215. In addition, because of the Rule, children who otherwise might have  
10 been placed in Illinois-licensed care will be held in federal family detention  
11 facilities either within or outside of Illinois.

12           **G. The Rule Conflicts with Maine’s Child Welfare Policy,**  
13           **Licensing, and Enforcement**

14           216. The Maine Department of Health and Human Services licenses  
15 residential placements for children, including, without limitation, emergency  
16 children’s shelters, family foster homes, children’s residential care facilities, and  
17 shelters for children. Me. Rev. Stat. tit. 22, §§ 7801, 8101 *et seq.*

18           217. Maine prohibits persons and entities from operating emergency  
19 children’s shelters, family foster homes, children’s residential care facilities, and  
20 shelters for homeless children, without a license. Me. Rev. Stat. tit. 22, § 7801,  
21 8101; *see* 10-144 Me. Code R. ch. 36; 10-148 Me. Code R. chs. 8, 9, 15, 16.

22           218. Maine’s Department of Health and Human Services has adopted rules  
23 for the various levels of children’s residential care facilities in order to protect the  
24 health, safety, well-being and development of children, pursuant to title 22, section  
25 22 of the Maine Revised Statutes.

26           219. Maine’s Department of Health and Human Services out-of-home child  
27 abuse or neglect investigation team has been established to investigate reports of  
28 suspected abuse or neglect of children by persons or in facilities subject to

1 department licensure. Me. Rev. Stat. tit. 22, §§ 8352-8358.

2 220. No license to operate an emergency children's shelter can be issued  
3 until Maine's Department of Health and Human Services determines compliance  
4 with all applicable requirements, which include, inspection by the State Fire  
5 Marshall's Office, required interviews, site visits, review of records, and technical  
6 assistance related to meeting and maintaining licensing requirements. 10-148 Me.  
7 Code R. ch. 9, § 4(A)-(F). Once a license is issued, the Department of Health and  
8 Human Services has the right to enter and inspect the facility and its records for  
9 compliance with the law and with licensing rules. *Id.* § 5(A)(4)(c). Failure to  
10 comply with licensing rules may lead to sanctions including suspension or  
11 revocation of the license. *Id.* § 5(C)(1)(f)-(g).

12 221. No license to operate a children's residential care facility can be  
13 issued until an application is submitted and the Department of Health and Human  
14 Services conducts required interviews, site visits, review of records, and technical  
15 assistance related to meeting and maintaining licensing requirements. 10-144 Me.  
16 Code R. ch. 36, § 4(A)(1)(e). Once a license is issued, the Department of Health  
17 and Human Services has the right to enter and inspect the facility and its records for  
18 compliance with the law and with licensing rules. *Id.* § 4(A)(2). In addition, the  
19 Department of Health and Human Services may investigate the facility's failure to  
20 comply with licensing rules. *Id.* § 5(C). Failure to comply with licensing rules may  
21 lead to sanctions including suspension or revocation of the license. *Id.*

22 222. Maine regulations of child residential care facilities require such  
23 facilities to establish policies that provide children the right to freedom from abuse  
24 or neglect, freedom from harmful actions or practices, freedom from unreasonable  
25 search, to a service plan, to a variety of activities, and the right to communicate,  
26 among other rights. 10-144 Me. Code R. ch. 36, § 5(E)(10).

27 223. No license to operate a foster home can be issued until the Department  
28 determines compliance with applicable licensing requirements, which include the

1 completion of a satisfactory safety inspection. 10-148 Me. Code R. ch. 16, §§ 2,  
2 9(E). Licenses are valid for two years. *Id.* § 4(A).

3 224. In the event the Maine Department of Health and Human Services,  
4 upon investigation, determines that conditions in the foster home immediately  
5 endanger the health or safety of persons living in the foster home, the Department  
6 may ask a Maine court for an emergency suspension of the foster home license.  
7 10-148 Me. Code R. ch. 16, at § 5(C).

8 225. State regulations require that foster home applicants undergo  
9 fingerprinting in order to allow Maine Department of Health and Human Services  
10 to submit required fingerprint-based checks of national crime information  
11 databases. 10-148 Me. Code R. ch. 16, at § 2(H).

12 226. No license to operate a children's shelter can be issued until the  
13 Department of Health and Human Services determines compliance with all  
14 applicable requirements, which include, inspection by the State Fire Marshall's  
15 Office, required interviews, site visits, review of records, and technical assistance  
16 related to meeting and maintaining licensing requirements. 10-148 Me. Code R.  
17 ch. 8, § 4(A)-(F). Once a license is issued, the Department of Health and Human  
18 Services has the right to enter and inspect the facility and its records for compliance  
19 with the law and with licensing rules. *Id.* § 6(C). Failure to comply with licensing  
20 rules may lead to sanctions including suspension or revocation of the license. 10-  
21 148 Me. Code R. ch. 8, app.

22 227. These protections for children are unavailable under the Rule and  
23 ICE's Residential Standards.

24 228. Maine does not have a statutory or regulatory licensing scheme for  
25 facilities that detain family units with adult parents or guardians. Accordingly,  
26 there are no such facilities in Maine.

27 229. By creating an alternate licensing scheme to allow family detention in  
28 locked facilities in Maine—to be overseen by a federal contractor rather than the

1 Maine Department of Health and Human Services and with standards far short of  
2 those required for dependent children under Maine law—the Rule undermines  
3 Maine’s ability to enforce its state laws and procedures for ensuring child welfare.

4 230. In addition, because of the Rule, children who otherwise may have  
5 been placed in Maine licensed care will be held in federal family detention facilities  
6 either within or outside of Maine.

7 **H. The Rule Conflicts with Maryland’s Child Welfare Policy,**  
8 **Licensing, and Enforcement**

9 231. It is Maryland state policy to “promote a stable, safe, and healthy  
10 environment for children and families that provides access to necessary services  
11 and supports in the least restrictive, most appropriate, and most effective  
12 environment possible.” Md. Code Ann., Hum. Servs. § 8-102. Maryland’s  
13 approach aims to be “family-driven, child-guided, home- and community-based,  
14 culturally and linguistically competent, individualized, and effective,” providing a  
15 “continuum of care, opportunities, and supports that emphasize prevention, early  
16 intervention, and community-based services.” *Id.* Beginning in 2007, Maryland  
17 began implementing the “Place Matters” initiative, which aims to prevent children  
18 from coming into care when possible, reduce the reliance on out-of-home care, and  
19 reduce the length of stay in out-of-home care.

20 232. Maryland has a comprehensive licensing scheme for all residential  
21 child care facilities (group homes) and child placement agencies (foster care). The  
22 Maryland Department of Human Services is responsible for licensing decisions for  
23 child placement agencies and residential child care facilities for the care of  
24 dependent children.

25 233. Applications for a residential child care facility or a child placement  
26 agency license require detailed descriptions of the applicant’s organizational  
27 structure, governance, fiscal condition, policies, history, and operations. The  
28 Department of Human Services inspects all physical facilities to ensure they meet

1 regulatory requirements and conducts interviews with applicants. All prospective  
2 employees whose positions include working with or in close proximity to children  
3 are required to submit to state and federal criminal background investigations.  
4 Maryland monitors compliance through review of records and through  
5 unannounced and announced site visits during which records may be examined and  
6 staff and children interviewed. Any complaints about a residential child care  
7 facility must be responded to within 24 hours of receipt. Non-compliance with  
8 regulatory standards can result in the removal of children from the facility and the  
9 imposition of sanctions, including the suspension or revocation of the license.

10 234. Maryland licenses all residential child care facilities and child  
11 placement agencies, including those that have contracts with ORR to provide  
12 housing to unaccompanied children in federal custody. Maryland currently licenses  
13 and monitors one residential facility and one placement agency with federal  
14 contracts to house immigrant children. It is a criminal violation to operate a  
15 residential child care facility or child placement agency in Maryland without a  
16 license. *See* Md. Code Ann., Hum. Servs. § 8-710; Md. Code Ann., Fam. Law  
17 §§ 5-507, 5-509, 5-509.1, 5-521.

18 235. Each child in residential child care in Maryland must be treated in  
19 compliance with Maryland's Residents' Bill of Rights. The Bill of Rights provides,  
20 among other things, that all child residents have a right "to be treated with fairness,  
21 dignity, and respect," to "visitation, mail, and telephone communication with  
22 relatives, friends, attorneys, social workers, therapists, and guardians ad litem," and  
23 to "an appropriate education, including educational supports such as homework  
24 assistance, summer enrichment opportunities, and employment skills training."  
25 Md. Code Ann., Hum. Servs. § 8-707. These rights exceed those required by the  
26 Rule and contained in the ICE Residential Standards.

27 236. Every residential child care program is required to develop an  
28 individual plan of care for each child resident. Md. Code Regs. 14.31.06.17. Each

1 plan is to include education, including special education; family relationship; health  
2 care; life skills development; personal, emotional, and social development; a  
3 recreation plan; and vocational training. *Id.* The plans are reviewed and updated  
4 every ninety days, modified as needed by the child's needs, interests, and  
5 circumstances. Documentation of monthly progress toward achievement of goals is  
6 required. *Id.* Neither the Rule nor the ICE Residential Standards require the  
7 development of a similar individual plan of care.

8 237. Maryland does not have a statutory or regulatory licensing scheme for  
9 facilities that detain family units with adult parents or guardians. Accordingly,  
10 there are no such facilities in Maryland.

11 238. By creating an alternate licensing scheme to allow family detention in  
12 locked facilities in Maryland to be overseen by a federal contractor rather than the  
13 state and with standards far short of those required for dependent children under  
14 Maryland law, the Rule undermines Maryland's ability to enforce its state laws and  
15 procedures for ensuring child welfare.

16 239. In addition, because of the Rule, children who otherwise may have  
17 been placed in Maryland-licensed care will be held in federal family detention  
18 facilities either within or outside of Maryland.

19 **I. The Rule Conflicts with Michigan's Child Welfare Policy,**  
20 **Licensing, and Enforcement**

21 240. Safety, permanency, and child well-being are the major concerns of  
22 Michigan's child welfare laws and public policy. The focus of Michigan's child  
23 welfare policy is strengthening families to help them provide adequate care for their  
24 children. Michigan provides services to children and families that safely reduce  
25 unnecessary out-of-home placements and the length of time that children live apart  
26 from their birth families before reunification. If reunification is not possible,  
27 services must be provided to ensure a permanent placement for children in a timely  
28 manner. Michigan law calls for children to be placed in the least restrictive setting



1 appropriate to their needs. Mich. Comp. Laws § 722.958b(3)(h).

2       241. The Child Care Organizations Act, Mich. Comp. Laws § 722.111 *et*  
3 *seq.*, provides the statutory authority and comprehensive scheme for the licensing of  
4 institutions, foster parents, day care operators, and staff. The Division of Child  
5 Welfare Licensing is responsible for the licensing of institutions that care for  
6 children outside a parent or guardian's custody and of foster parents who care for  
7 the children placed in the legal custody of the Michigan Department of Health and  
8 Human Services. Michigan's statutes and administrative rules detail the  
9 requirements involved with the prospective licensing, including comprehensive  
10 background checks for staff and administrators of child caring institutions, and  
11 compliance with training and staffing requirements for child care institutions over  
12 which the state has legal care and supervision. The Division of Child Welfare  
13 Licensing provides direct oversight and monitoring of child caring institutions to  
14 ensure compliance with licensing rules and with the Child Care Organizations  
15 Act. The Division of Child Welfare Licensing conducts on-site inspections  
16 annually to monitor for compliance, and investigates allegations of noncompliance.  
17 Michigan enforces compliance with its standards through actions for injunctive  
18 relief and sanctions including fines, license revocation, and criminal liability.  
19 Mich. Comp. Laws §§ 722.123, 722.125. Michigan law prohibits persons and  
20 entities from operating community care facilities without a license. *Id.*  
21 § 722.115m(2).

22       242. Michigan's child welfare responsibilities include licensing and  
23 monitoring the residential conditions of children under state care who have pending  
24 civil immigration proceedings. The state licenses all child care organizations, child  
25 placing agencies, foster family homes, and foster family group homes in Michigan,  
26 including those that provide housing or placement to unaccompanied children in  
27 federal custody. Currently, unaccompanied children in ORR custody are being  
28 placed in Michigan by two agencies licensed for child placement and care by the

1 Division of Child Welfare Licensing.

2 243. Michigan law does not permit children to be placed in secure detention  
3 unless a delinquency complaint or petition has been filed or an adult criminal  
4 charge has been issued and the judge has issued an order for detention; secure  
5 detention is not permitted to be used as a placement for neglect/abuse wards. Mich.  
6 Comp. Laws § 712A.15(4).

7 244. Michigan law provides for what is called the “children’s assurance of  
8 quality foster care,” including minimum standards for the quality foster care a child  
9 can anticipate when in the state’s care. Mich. Comp. Laws §§ 722.958b, 722.958c,  
10 722.958d. Michigan requires that children in its care receive the following services,  
11 which are not required under the Rule or ICE’s Residential Standards:

- 12 a. Transition planning, including housing, financial education,  
13 information regarding secondary education and post-secondary  
14 education, and independent living; and
- 15 b. Participation in extracurricular activities consistent with the  
16 child in foster care's age and developmental level.

17 245. Michigan does not have a statutory or regulatory licensing scheme for  
18 facilities that detain family units with adult parents or guardians. Accordingly,  
19 there are no such facilities in Michigan.

20 246. By creating an alternate licensing scheme to allow family detention in  
21 locked facilities in Michigan—to be overseen by a federal contractor rather than the  
22 Michigan Department of Health and Human Services and with standards far short  
23 of those required for dependent children under Michigan law—the Rule undermines  
24 Michigan’s ability to enforce its state laws and procedures for ensuring child  
25 welfare.

26 247. In addition, because of the Rule, children who otherwise might have  
27 been placed in Michigan-licensed care will be held in federal family detention  
28 facilities either within or outside of Michigan.

**J. The Rule Conflicts with Minnesota’s Child Welfare Policy, Licensing, and Enforcement**

248. The State of Minnesota’s public policy affirms the importance of family integrity. For example, Minnesota Statutes, section 260C recognizes the importance of “preserv[ing] and strengthen[ing] the child’s family ties whenever possible and in the child’s best interests.” Minn. Stat. § 260C.001, subd. 2(b)(3). In Minnesota, children who cannot safely remain in their familial home may be placed in family foster care or a group residential facility. Children taken into custody “shall be detained in the least restrictive setting consistent with the child’s health and welfare and in closest proximity to the child’s family as possible.” Minn. Stat. § 260C.181, subd. 2.

249. The Minnesota Department of Human Services is exclusively responsible for licensing child residential care facilities and foster care placements. The Minnesota Department of Human Services has authority to monitor licensed entities as part of a licensing investigation or licensing inspection, and may issue an order of conditional license or order of revocation. *See* Minn. Stat. §§ 245A.04, subd. 1(h); 245A.04, subd. 5; 245A.075(a).

250. To prevent harm to children in out-of-home care, the Minnesota Department of Human Services requires that caregivers, including caregivers in group residential facilities, comply with training requirements and conducts background studies on applicants for licensure. “An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.” Minn. Stat. § 245A.04, subd. 1(d). And, “[t]he applicant must be able to demonstrate competent knowledge of the applicable requirements of this chapter and chapter 245C, and the requirements of other licensing statutes and rules applicable to the program or services for which the applicant is seeking to be licensed.” Minn. Stat. § 245A.04, subd. 1(e); *see also*

1 Minn. Stat. § 245C.03 (regarding background studies).

2 251. Minnesota Statutes, section 245A.03, subdivision 1, prohibits persons  
3 and entities from operating residential or nonresidential programs without a license.

4 252. Minnesota law requires that children in residential facilities be  
5 guaranteed particular services, rights, freedoms, or oversight unavailable under the  
6 Rule or ICE's Residential Standards, including:

7 a. "The license holder must have discipline policies and procedure  
8 that require the resident's abuse history and developmental,  
9 cultural, disability, and gender needs be taken into consideration  
10 when deciding the disciplinary action to be taken with a  
11 resident." Minn. R. 2960.0080, subp. 5. Punishment shall not  
12 be imposed for "lapses in toilet habits, including bed wetting  
13 and soiling." Minn. R. 2960.0080, subp. 5(A)(3). The use of  
14 timeout as a punishment has specific requirements that must be  
15 satisfied. Minn. R. 2960.0080, subp. 5(D).

16 b. Bedrooms with foster children must have two exits. Minn. R.  
17 2960.3040, subp. 2.

18 253. Under Minnesota law, secure detention facilities are physically  
19 restraining facilities, including jails, hospitals, state institutions, residential  
20 treatment centers, and detention homes. Minn. Stat. § 260C.007, subd. 29. Other  
21 than temporary (24-hour) custody, placement in a secure detention facility is  
22 generally not authorized for children absent an allegation of criminal activity.

23 254. Minnesota does not have a statutory or regulatory licensing scheme for  
24 facilities that detain family units with adult parents or guardians. Accordingly,  
25 there are no such detention facilities in Minnesota.

26 255. By creating an alternate licensing scheme to allow family detention in  
27 locked facilities in Minnesota—to be overseen by a federal contractor rather than  
28 the Minnesota Department of Human Services and with standards falling far short

1 of those required for dependent children under Minnesota law—the Rule  
 2 undermines Minnesota’s ability to enforce its state laws and procedures for  
 3 ensuring child welfare.

4 256. In addition, because of the Rule, children who otherwise may have  
 5 been placed in Minnesota-licensed care will be held in federal family detention  
 6 facilities either within or outside of Minnesota.

7 **K. The Rule Conflicts with Nevada’s Child Welfare Policy,**  
 8 **Licensing, and Enforcement**

9 257. Nevada has a significant interest in ensuring the health, safety, and  
 10 well-being of all children, including those in child care facilities. To advance this  
 11 interest, Nevada has a robust and comprehensive regulatory regime to license child  
 12 care facilities, including child care institutions. Nevada prioritizes placing children  
 13 in the least restrictive setting possible that is best for the child, prioritizing  
 14 placement with relatives and foster homes before child care institutions. Nev. Rev.  
 15 Stat. § 432B.390.

16 258. To prevent predictable harm to children in care, Nevada provides  
 17 orientation prior to licensure, screens applicants, performs background checks, and  
 18 inspects child care institutions. Nevada has the authority to investigate complaints  
 19 and enforce standards. Specifically, upon receiving an application for licensure,  
 20 Nevada investigates the premises of the facility, qualifications and background of  
 21 all employees, method of operation of the facility, and “policies and purposes” of  
 22 the applicant. Nev. Rev. Stat. § 432A. 170. Nevada requires child care employees  
 23 to complete training on child abuse and neglect; care, education and safety of  
 24 children; and child wellness related to nutrition and physical activity. *Id.*  
 25 §§ 432A.1775; 432A.1776. Any Nevada-licensed emergency shelter must have  
 26 policies related to the administration of medication and medical treatment for  
 27 children. *Id.* § 432A.1757. Such emergency shelters must treat each child in  
 28 accordance with the child’s gender identity or expression. *Id.* § 432A.1759.

1           259. Nevada’s Chief Medical Officer must inspect all areas where food is  
2 prepared and served, bathrooms, areas used for sleeping; and common and outdoor  
3 areas used by children at least annually. Nev. Rev. Stat. § 432A.186. If the child  
4 care institution violates any regulations or standards, Nevada may impose  
5 administrative penalties, limit the occupancy, appoint temporary management, or  
6 suspend the license until the violation are corrected. *Id.*

7           260. Nevada prohibits persons and entities from operating child care  
8 institutions without a license from the Division of Public and Behavioral Health of  
9 the Nevada Department of the Health and Human Services. *See* Nev. Rev. Stat.  
10 § 432A.131. Operation without a license can lead to criminal prosecution and/or  
11 civil proceedings. *See id.* §§ 432A.210; 432A.220.

12           261. Nevada also requires child care institutions to obtain “or develop a  
13 complete social study of each child not later than 30 days after his or her  
14 admission.” *See* Nev. Admin. Code § 432A.450(1)(b). Nevada ensures that this is  
15 done by ensuring a minimum ratio of two social workers for every 50 children in a  
16 child care institution. *See id.* § 432A.445(1). Nevada also requires each institution  
17 to make “the greatest use of small groups of persons to aid in developing the  
18 individuality of the child and helping him or her to attain a sense of personal  
19 identity.” *See id.* § 432A.450(2)(d). Upon information and belief, these services  
20 are unavailable under ICE’s Residential Standards and are not required by the Rule.

21           262. Nevada does not have a statutory or regulatory licensing scheme for  
22 facilities that detain family units with adult parents or guardians. Accordingly,  
23 there are no such facilities in Nevada.

24           263. By creating an alternate licensing scheme to allow federal contractors  
25 to oversee family detention in locked facilities rather than the Nevada Division of  
26 Public and Behavioral Health and with standards far short of those required for  
27 dependent children under Nevada law, the Rule undermines Nevada’s ability to  
28 enforce its state laws and procedures for ensuring child welfare.

1           264. Additionally, because of the Rule, children who otherwise may have  
2 had Nevada-licensed care will be held in federal family detention facilities either  
3 within or outside of Nevada.

4           **L. The Rule Conflicts with New Jersey’s Child Welfare Policy,**  
5           **Licensing, and Enforcement**

6           265. New Jersey’s child welfare law declares that “the preservation and  
7 strengthening of family life is a matter of public concern as being in the interests of  
8 the general welfare.” N.J Stat. Ann. § 30:4C-1(a). When a child has been removed  
9 from her parent, the State must endeavor to place the child with a relative, in her  
10 own community, and with a sibling, if applicable. *Id.* § 9:6B-4. To the extent that  
11 placement outside of the home is necessary, New Jersey law requires that the  
12 setting be “the least restrictive setting appropriate to the child’s needs and  
13 conducive to the health and safety of the child,” *Id.* § 9:6B-4(g), and the child must  
14 be free from physical or psychological abuse.

15           266. New Jersey’s Department of Children and Families licenses and  
16 oversees group homes, residential facilities, and shelters for children residing in the  
17 State. The physical facilities must meet the rigorous standards issued by the State  
18 Office of Licensing, the New Jersey Uniform Construction Code, the New Jersey  
19 Fire Code, and the State Sanitary Code, which requires approval by municipal,  
20 county, or state health agencies. If the facility poses a “serious or imminent hazard  
21 to the education, health, safety, well-being, or treatment needs of the children” a  
22 license will be denied. N.J. Admin. Code §§ 3A:55-2.2; 3A:56-2.2. Facilities must  
23 comply with background check, criminal history disclosures, and Child Abuse  
24 Registry Check and a license may be denied or terminated upon failure to comply.  
25 The Department of Children and Families takes enforcement action on facilities that  
26 fail to meet its licensing standards or refuse to allow inspectors or investigators.

27           267. The New Jersey Department of Children and Families is responsible  
28 for ensuring that state-licensed facilities meet the minimum requirements for



1 ensuring the education, health, safety, and well-being of children in their care.  
2 Group homes, residential facilities, and shelters in New Jersey are required to  
3 ensure that all school-age children receive educational programming in the local  
4 school district or through appropriate home instruction. All children in group  
5 homes and residential facilities must also have a comprehensive health plan, and the  
6 group home must ensure their medical, dental, mental health, and nutrition needs are  
7 met. Group homes are also required to maintain a visitation policy and must allow  
8 children to make free telephone calls. Many of these protections and services are  
9 not required by the Rule or ICE's Residential Standards.

10 268. Pursuant to its authority to license shelters, the New Jersey Department  
11 of Community Affairs approves licenses shelters for unaccompanied children, as  
12 well as shelter for mothers and babies, run by a private organization contracting  
13 with ORR. N.J. Stat. Ann. § 55:13C-5. Inspectors from the Department of  
14 Children and Families will accompany and provide technical assistance when  
15 inspecting centers providing care to unaccompanied children. New Jersey does not  
16 have a statutory or regulatory licensing scheme for facilities that detain family  
17 units. Accordingly, there are no such facilities in New Jersey.

18 269. These facilities must afford residents a "safe, healthful, and decent  
19 living environment that recognizes the dignity and individuality of the resident."  
20 N.J. Admin. Code § 5:15-3.1. Residents must be free from restraint or confinement  
21 and must be permitted to have visitors. Emergency shelters must also provide  
22 referral services for medical care, mental health care, and social services. All  
23 facilities with children are required to ensure that resident children attend school on  
24 a daily basis and are provided medical attention as necessary.

25 270. New Jersey law does not allow for the placement of children in locked  
26 facilities outside of the criminal justice and juvenile justice systems.

27 271. ICE's Residential Standards lack, and the Rule does not require,  
28 certain protections provided in New Jersey's parallel regulations for New Jersey

1 programs operated under the auspices of and licensed by the Department of  
2 Children and Families and the Department of Community Affairs.

3 272. By creating an alternate licensing scheme to allow family detention in  
4 locked facilities in New Jersey to be overseen by a federal contractor rather than the  
5 New Jersey Department of Children and Families and with standards well below  
6 those required for dependent children under New Jersey law, the Rule undermines  
7 New Jersey's ability to enforce its state laws and procedures for ensuring child  
8 welfare.

9 273. In addition, because of the Rule, children who otherwise may have  
10 been placed in New Jersey licensed care and subject to New Jersey's more robust  
11 protections may be held in federal family detention facilities either within or  
12 outside of New Jersey and subject to lesser protections.

13 **M. The Rule Conflicts with New Mexico's Child Welfare Policy,**  
14 **Licensing, and Enforcement**

15 274. New Mexico considers a child's health and safety of paramount  
16 concern and intends "that children in New Mexico be reared as members of a  
17 family unit." N.M. Stat. Ann. § 32A-1-3.

18 275. The New Mexico Children's Code was adopted in 1993 with the  
19 express purpose of providing "for the care, protection and wholesome mental and  
20 physical development of children" and established procedures to protect the  
21 statutory and constitutional rights of children in the State. *ACLU of N.M. v. City of*  
22 *Albuquerque*, 992 P.2d. 866, 870 (N.M. 1999).

23 276. New Mexico's "Children's Shelter Care Act," part of the State's  
24 Children's Code, governs standards of care for children in State custody when  
25 return to the child's family is not feasible or when intervention programs alone are  
26 inadequate for the child's care. N.M. Stat. Ann. §§ 32A-9-1-7. One purpose of the  
27 Children's Shelter Care Act is to address the problem that "many children are  
28 needlessly detained in secured facilities" when they "would benefit from either

1 immediate return to the family or placement in shelter-care homes or nonsecured  
2 shelter-care facilities.” *Id.* § 32A-9-2 (A).

3 277. The New Mexico Children’s Code provides for a continuum of  
4 services for children and their families and is designed to provide culturally  
5 sensitive services while reducing the overrepresentation of minority children in the  
6 child care system. N.M. Stat. Ann. § 32A-1-3.

7 278. The Protective Services Division of New Mexico’s Children, Youth  
8 and Families Department is responsible for all child welfare services for children  
9 and families in New Mexico. Services are provided “in a setting most consistent  
10 with the least restrictive alternatives.” N.M. Code R. § 8.8.2.12. Further, those  
11 services are offered without regard to national origin, race, religion, color, ancestry,  
12 sex, age, physical or mental handicap, serious medical condition, spousal affiliation,  
13 sexual orientation or gender identity. *Id.* § 8.8.2.9.

14 279. The Children, Youth and Families Department licenses all children’s  
15 care facilities in New Mexico, including child shelter care facilities and other  
16 residential facilities that house children. The Children’s Code’s standards of  
17 residential care for the placement of children are implemented by regulation with  
18 the objective of establishing “minimum standards for licensing of residential  
19 facilities that provide services in order to promote the health, safety and welfare of  
20 children in need of such services” and to “assure that adequate supervision must be  
21 provided at all times.” N.M. Code R. § 7.8.3.6.

22 280. Children’s shelter-care regulations specify licensing, reporting, and  
23 space and building requirements, as well as setting standards for medical care,  
24 nutrition, housekeeping, waste disposal, and seclusion rooms, among other things.  
25 N. M. Code R. § 7.8.3.2. The regulations require shelter care for children to  
26 “support, protect, and enhance the rights of children.” *Id.* § 7.8.3.28 (B)(7), (8).  
27 The regulations also include rigorous requirements for staffing levels, staff  
28 qualifications, staff training and evaluation, staff health certificates and criminal

1 background checks, and record-keeping. *Id.* §§ 7.8.3.30-.34. A facility that  
 2 violates these regulations may have its license suspended or revoked, among other  
 3 penalties. *Id.* § 7.8.3.7.

4 281. ORR facilities in New Mexico are also subject to the control of the  
 5 Children, Youth and Families Department and New Mexico's shelter-care  
 6 regulations. N. M. Code R. § 7.8.3.2.

7 282. ICE Residential Standards create alternate licenses that allow for  
 8 housing migrant families, including their children, in locked facilities. New  
 9 Mexico's regulatory scheme does not support detention of families with adult  
 10 parents or guardians, and no family detention facility is located within the State.

11 283. Beyond what is required by ICE's Residential Standards or the Rule,  
 12 New Mexico expressly requires that facilities provide each child "his/her own  
 13 clearly identified toothbrush, comb, hair brush and other items for personal  
 14 hygiene" and must provide a nutritious menu that does not repeat within a one-  
 15 week cycle, in a setting that allows for children to "eat at a leisurely rate"  
 16 encouraging socialization and a "pleasant mealtime experience." N. M. Code R.  
 17 §§ 7.8.3.53, 7.8.3.55.

18 284. By creating an alternate licensing scheme to allow family detention in  
 19 locked facilities in New Mexico—to be overseen by a federal contractor rather than  
 20 CYFD and with standards far short of those required for dependent children under  
 21 New Mexico law—the Rule undermines New Mexico's ability to enforce its state  
 22 laws designed to ensure child welfare.

23 285. In addition, because of the Rule, children who otherwise might have  
 24 been placed in New Mexico-licensed care will be held in federal family detention  
 25 facilities either within or outside of New Mexico.

26 **N. The Rule Conflicts with New York's Child Welfare Policy,**  
 27 **Licensing, and Enforcement**

28 286. Pursuant to Article XVII of its Constitution, New York State is

1 empowered to exercise its sovereign interest in protecting the health, safety,  
2 treatment, and training of dependent, neglected, or delinquent children placed  
3 within its borders. N.Y. Const. art. XVII, § 2. The Division of Child Welfare and  
4 Community Services of the New York State Office of Children and Family  
5 Services oversees child welfare services within the state.

6 287. The Office of Children and Family Services oversees programs that  
7 care for, place out, or board out children within the State. N.Y. Soc. Serv. Law  
8 § 371(10). The Office of Children and Family Services sets and enforces  
9 regulations to make sure that those children are cared for in safe and well-  
10 maintained facilities; are free from abuse or maltreatment; and are afforded  
11 appropriate education, health care, and other essential services. *See* N.Y. Const. art.  
12 XVII; N.Y. Soc. Serv. Law §§ 34, 34-a.

13 288. In New York, children must be placed in the “least restrictive and most  
14 homelike setting” possible where they can be maintained safely and receive the  
15 services specified in the foster child’s service plan. N.Y. Comp. Codes R. & Regs.  
16 tit. 18, § 430.11(d).

17 289. Voluntary authorized agencies organized as not-for-profit corporations  
18 under New York State law may apply to operate congregate care facilities and  
19 foster family boarding homes. With respect to all licensing applicants, the Office of  
20 Children and Family Services engages in a comprehensive review that includes: the  
21 background and appropriate experience of the executive director, board of directors,  
22 and other relevant personnel and the fitness and adequacy of any proposed facility  
23 or program.

24 290. Once a voluntary authorized agency is licensed, it must receive  
25 additional approval in the form of an operating certificate to open a congregate care  
26 program or foster family home certification program. The Office of Children and  
27 Family Services requires the same application process of voluntary authorized  
28 agencies and conducts the same review for issuance of an operating certificate to an

1 ORR-funded program as it does for any other congregate care program or foster  
2 family home certification program in New York.

3 291. In keeping with the Office of Children and Family Services' broad  
4 authority over the inspection and supervision of residential programs, each potential  
5 program receives a robust review pursuant to a variety of subject areas, including:  
6 the adequacy of the physical facility; the education, recreation, health, and medical  
7 services to be provided to children in care; compliance with background check  
8 requirements for staff to promote safety; and residents' privacy rights.

9 292. Following the issuance of an operating certificate, the Office of  
10 Children and Family Services conducts comprehensive reviews for voluntary  
11 authorized agencies running congregate care programs and certifying foster family  
12 boarding homes. Monitoring includes quarterly site visits; additional announced or  
13 unannounced onsite visits; and investigation of complaints. The Office of Children  
14 and Family Services enforces standards through notices of deficiency, heightened  
15 monitoring, fines, and civil penalties that can lead to license revocation and further  
16 legal action should a party elect to appeal the revocation of a license.

17 293. Though the Office of Children and Family Services' licensing  
18 authority largely concerns facilities where children reside away from their parents,  
19 its authority and interests also include programs where parents reside with their  
20 children. Such programs specifically include (1) minor parent and baby programs  
21 for minor parents who are in foster care, N.Y. Comp. Codes R. & Regs. tit. 18,  
22 § 442.17; (2) residential programs for victims of domestic violence and their minor  
23 children, *id.* § 452.2 *et seq.*; and (3) supervised independent living programs which  
24 are independent living situations with minimum supervision by staff to provide a  
25 transitional experience for up to four older youth including their children. *Id.*  
26 § 449.1-8. Therefore, the federal government's assertions that "... States  
27 generally do not have licensing schemes for facilities to hold minors who are  
28 together with their parents or legal guardians, and therefore by definition are not

1 ‘dependent children’” is patently incorrect. 83 Fed. Reg. 45,486, 45488; *see also*  
2 84 Fed. Reg. 44,392, 44,394. Notwithstanding, New York does not have a statutory  
3 or regulatory licensing scheme for facilities that detain family units. Accordingly,  
4 there are no family detention facilities within New York State.

5 294. New York currently licenses and monitors eleven voluntary authorized  
6 agencies in New York State that provide care to children in ORR custody.

7 295. New York prohibits persons and entities from operating foster care  
8 agencies without the required license and operating certificate, which includes  
9 congregate care programs and foster family boarding home licensing agencies. *See,*  
10 *e.g.*, N.Y. Soc. Serv. Law §§ 371, 460-a, 460-b. The operation of such facilities  
11 without approval by the Office of Children and Family Services can lead to civil  
12 proceedings. *Id.* § 460-a.

13 296. In New York, placement in a secure facility is limited to youth who  
14 have a juvenile criminal conviction and are serving a sentence arising out of that  
15 conviction. N.Y. Comp. Codes R. & Regs. tit. 9, §§ 180-1.1–180.1.21, 180-3.1–  
16 180-3.32, and *id.* tit. 18 §§ 450.1–450.10.

17 297. Neither the Rule nor ICE Residential Standards allow children the  
18 independence mandated by the reasonably prudent parent standard set forth by New  
19 York law. *See* N.Y. Comp. Codes R. & Regs. tit. 18, § 441.25. Consequently,  
20 children that would otherwise be able to leave a congregate care facility under New  
21 York law in order to engage in self-directed activities such as competitive athletics,  
22 after-school volunteering, or employment would be prohibited from doing so in  
23 federal family detention under the Rule, impeding their growth and development  
24 into productive young adults.

25 298. In light of the foregoing distinctions, this alternate federal licensing  
26 scheme would subject families detained in locked facilities within the State of New  
27 York to conditions and standards far short of those required for dependent children  
28 under New York State law, while preventing New York from monitoring and



1 enforcing its own child welfare standards. This will undermine New York's ability  
2 to enforce its state laws and procedures for ensuring child welfare.

3 299. Additionally, because of the Rule, children who otherwise would have  
4 been placed in New York-licensed care facilities may be held in federal family  
5 detention facilities either within or outside of New York.

6 **O. The Rule Conflicts with Oregon's Child Welfare Policy,**  
7 **Licensing, and Enforcement**

8 300. The State of Oregon has statutorily codified a number of deeply-rooted  
9 public concerns regarding the care and protection of children within its boundaries.  
10 Oregon recognizes the intrinsic value of family relationships and has declared there  
11 is a "strong preference" that children live "with their own families." Or. Rev. Stat.  
12 § 419B.090(5). Custody determinations are based on the best interest of the child,  
13 including "[t]he emotional ties between the child and other family members" as  
14 well as "[t]he desirability of continuing an existing relationship." *Id.*

15 301. When substitute care is required, Oregon law requires that the child's  
16 placement be the "most home-like, least restrictive available to meet the needs of  
17 the child or young adult." Or. Admin. R. 413-070-0625(1)(g). Pursuant to the  
18 federal Social Security Act, Oregon has adopted a case review system to ensure  
19 "placement in a safe setting that is the least restrictive (most family-like) and most  
20 appropriate setting available and in close proximity to the parent's home." 42  
21 U.S.C. § 675(5)(A).

22 302. Oregon law limits the use of detention for children to instances where  
23 the child is alleged to have committed an act that is a violation of a law or  
24 ordinance, has been found to be under the jurisdiction of the juvenile court, or is an  
25 out-of-state runaway. *See* 2019 Or. Laws, ch. 362.

26 303. Oregon recognizes that children have a right to "freedom from. . .  
27 emotional abuse or exploitation." Or. Rev. Stat. § 419B.090(1). In addition, "[i]t is  
28 the policy of the State of Oregon to safeguard and promote each child's right to

1 safety, stability and well-being and to safeguard and promote each child's  
2 relationships with parents, siblings, grandparents, other relatives and adults with  
3 whom a child develops healthy emotional attachments." *Id.* § 419B.090(3).

4 304. The Oregon Department of Human Services licenses child-caring  
5 agencies in Oregon, including a facility offering residential care and support  
6 services on contract with ORR. Or. Rev. Stat. § 418.215. Such a facility caring for  
7 immigrant children is defined as a child-caring agency. *Id.* § 408.205(2)(a)(A).  
8 The Oregon Department of Human Services supervises and inspects all child-caring  
9 agencies in Oregon. *Id.* § 418.225.

10 305. In order to issue a license, the Oregon Department of Human Services  
11 must ensure that a child-caring agency is or will be in full compliance with the  
12 requirements to: ensure child and family rights, comply with all applicable abuse  
13 reporting and investigation requirements, apply appropriate behavior management  
14 techniques, provide adequate furnishing and personal items for children, provide  
15 appropriate food services, ensure the safety of children, use approved procedures  
16 and protocols for the use of medications for children, and provide access to a child  
17 receiving services to the Department of Human Services, the child's attorney, any  
18 governmental agency having a contract with the child-caring agency, or any other  
19 person authorized by the Department. Or. Rev. Stat. § 418.240(2)(a); *see also* Or.  
20 Admin. R. 413-215-0001(4). In addition, the Department may suspend, revoke, or  
21 place conditions on a license if the agency is not in compliance with any one of  
22 these requirements. Or. Rev. Stat. § 418.240(2)(b).

23 306. Additionally, a child-caring agency must afford children in care the  
24 right to: (1) uncensored communication with caregivers, caseworkers, legal  
25 guardians, legal representatives, and others approved by the legal guardian or court  
26 order; (2) privacy; (3) participate in service or educational program planning;  
27 (4) fair and equitable treatment; (5) file a grievance; (6) adequate and personally  
28 exclusive clothing; (7) personal belongings; (8) an appropriate education;

1 (9) participate in recreation and leisure activities; and (10) timely access to physical  
2 and behavioral health care services. Or. Admin. R. 413-215-0046(1).

3 307. The Oregon Department of Human Services is required to investigate  
4 all reports of abuse, deficiencies, violations or failures to comply with the full  
5 compliance requirements in section 418.240(2)(a), and take appropriate action, with  
6 concern given to the health, safety, and welfare of the children for whom the child-  
7 caring agency is responsible. Or. Rev. Stat. § 418.260.

8 308. Operating a child-caring agency without a license is a Class A  
9 misdemeanor. Or. Rev. St. § 418.990(3). In addition, the Oregon Department of  
10 Human Services may impose a civil penalty on any child-caring agency that  
11 operates without a license. *Id.* § 418.992(1)(d).

12 309. A child-caring agency in Oregon must assure the child's right to  
13 participate in recreation and leisure activities. Or. Admin. R. 413-215-0046(1)(i).  
14 An agency providing residential care must ensure a child has the ongoing  
15 opportunity to participate in at least one age-appropriate or developmentally  
16 appropriate activity. *Id.* at 413-215-0554(2).

17 310. Oregon does not have a statutory or regulatory licensing scheme for  
18 facilities that detain family units with adult parents or guardians. Accordingly,  
19 there are no such facilities in Oregon.

20 311. By creating an alternate licensing scheme to allow family detention in  
21 locked facilities in Oregon—to be overseen by a federal contractor rather than the  
22 Oregon Department of Human Services and with standards far short of those  
23 required for dependent children under Oregon law—the Rule undermines Oregon's  
24 ability to enforce its state laws and procedures for ensuring child welfare.

25 312. In addition, because of the Rule, children who otherwise might have  
26 been placed in Oregon-licensed care will be held in federal family detention, either  
27 within or outside of Oregon.  
28

**P. The Rule Conflicts with Pennsylvania’s Child Welfare Policy, Licensing, and Enforcement**

313. Pennsylvania has licensed and monitored residential placements for children as part of its child welfare system since 1967.

314. The Pennsylvania Department of Human Services has supervision over all not-for-profit “children’s institutions,” for-profit “boarding homes for children,” and for-profit “child care centers” within the Commonwealth. 62 Pa. Cons. Stat. §§ 902, 901, 1001, 1002. The facilities include those that have contracts with ORR to provide housing to unaccompanied children in federal custody.

315. These facilities cannot operate without a certificate of compliance issued by the Pennsylvania Department of Human Services. 55 Pa. Code §§ 20.21, 20.51, 3800.11. As part of its enforcement and oversight authority, the Department conducts annual inspections, as well as unannounced and complaint-based inspections. *Id.* §§ 20.33, 3800.4. The Department may revoke or decline to renew a certificate of compliance for failure to comply with Pennsylvania regulations; failure to submit or adhere to a plan of correction; mistreatment or abuse of clients; and gross incompetence, negligence, or misconduct, among other grounds. *Id.* § 20.71. The Department may also issue provisional certificates of compliance if a facility is in substantial but not complete compliance with applicable statutes, ordinances, and regulations. *Id.* § 20.54. Provisional certificates cannot exceed six months. *Id.*

316. Pennsylvania regulations set out minimum standards “to protect the health, safety and well-being of children receiving care in a child residential facility.” 55 Pa. Code § 3800.1; *see generally id.* § 3800.

317. In addition to established civil rights under law, Pennsylvania regulations detail the specific rights guaranteed to each child, including the right to: be treated with dignity and respect; be free from discrimination and abuse; visitation and communications with family, legal counsel, and clergy; freedom from

1 unreasonable search and seizure; appropriate medical, behavioral health, and dental  
2 treatment; be free from “excessive medication”; be free from “unusual or extreme  
3 methods of discipline which may cause psychological or physical harm to the  
4 child”; and the right to clean, seasonal clothing that is age and gender appropriate.  
5 55 Pa. Code § 3800.32. Children cannot be deprived of these rights, nor can rights  
6 and visitation be used as a reward or sanction. *Id.* § 3800.33.

7       318. Pennsylvania regulations also establish minimum standards in a wide  
8 range of areas to ensure child health and safety: consent to medical treatment of the  
9 child (55 Pa. Code. § 3800.19); production and confidentiality of each child’s  
10 record (55 Pa. Code §§ 3800.21, 3800.241–3800.245); notification of the child’s  
11 rights, including the right to lodge grievances without retaliation (55 Pa. Code §  
12 3800.31); staffing (55 Pa. Code §§ 3800.51–3800.58); accommodation of children  
13 with disabilities (55 Pa. Code § 3800.81); healthy and safe physical sites (55 Pa.  
14 Code §§ 3800.81–3800.106); minimum bedroom size (55 Pa. Code § 3800.102);  
15 indoor activity space and separate recreation space (55 Pa. Code §§ 3800.98,  
16 3800.99); fire safety (55 Pa. Code §§ 3800.121–3800.132); written health and  
17 safety assessment within 24 hours of admission, and written plan to protect the  
18 child if necessary (55 Pa. Code §§ 3800.141–3800.142); health examination within  
19 15 days of admission (55 Pa. Code § 3800.143); dental, vision, hearing, health,  
20 behavioral, and emergency medical care (55 Pa. Code §§ 3800.144–3800.146,  
21 3800.148, 3800.149); nutrition, including three meals a day (55 Pa. Code  
22 §§ 3800.161–3800.164); safe transportation (55 Pa. Code § 3800.171);  
23 administration of medications (55 Pa. Code §§ 3800.181–3800.189); use of  
24 restrictive procedures, including general prohibitions on seclusion and manual  
25 restraints, and a general prohibition on chemical restraints absent an emergency and  
26 an order from a licensed physician (55 Pa. Code §§ 3800.201–3800.213);  
27 development of an individual service plan for each child’s care and treatment needs  
28 (55 Pa. Code §§ 3800.221–3800.230); additional requirements for facilities serving

1 nine or more children (55 Pa. Code §§ 3800.251–3800.257); and secure care,  
 2 including a general prohibition unless the child is alleged or adjudicated delinquent  
 3 (55 Pa. Code §§ 3800.271–3800.274).

4 319. Pennsylvania does not have a statutory or regulatory licensing process  
 5 for facilities that detain children with their adult parents or legal guardians.

6 320. By creating an alternate scheme that would allow family detention  
 7 facilities in Pennsylvania to be overseen by a federal contractor with standards short  
 8 of those required for dependent children under Pennsylvania’s law, the Rule  
 9 infringes on Pennsylvania’s inherent police power to license and regulate facilities  
 10 that care for dependent children and undermines Pennsylvania’s ability to enforce  
 11 its state laws and procedures for ensuring child welfare.

12 321. In addition, DHS may eventually attempt to use the Rule to continue  
 13 operating Berks County Residential Center as a family detention center without a  
 14 state license.

15 **Q. The Rule Conflicts with Rhode Island’s Child Welfare Policy,**  
 16 **Licensing, and Enforcement**

17 322. Rhode Island, as a matter of policy, finds that parents have the primary  
 18 responsibility for meeting the needs of their children, and the state has an obligation  
 19 to help them discharge this responsibility or to assume this responsibility when  
 20 parents are unable to do so . . . ”. R.I. Gen. Laws § 42-72-2(1). Rhode Island holds  
 21 “a basic obligation to promote, safeguard and protect the social well-being and  
 22 development of the children of the state through a comprehensive program  
 23 providing for,” *inter alia*, “facilities for children who require guidance, care,  
 24 control, protection, treatment, or rehabilitation” and “[t]he setting of standards for  
 25 social services and facilities for children.” *Id.* § 42-72-2(2).

26 323. Rhode Island state law provides for the Children’s Bill of Rights,  
 27 codified at title 42, chapter 72, section 15 of the Rhode Island General Laws, which  
 28 mandates that each child be treated in a humane and respectful manner with full



1 consideration for the child's personal dignity and right to privacy. Moreover, the  
2 regulations promulgated pursuant to the Children's Bill of Rights set standards to  
3 ensure that all agencies create safe, clean, healthy, and emotionally supportive  
4 environments where every child receives the least intrusive, most clinically  
5 appropriate intervention.

6 324. Pursuant to Rhode Island General Laws, title 42, chapter 72.9, *et seq.*,  
7 commonly known as the "Children's Right to Freedom From Restraint Act," it is  
8 the policy of the State of Rhode Island to ensure that children are placed in the  
9 least-restrictive setting.

10 325. Rhode Island prohibits the provision of full-time care apart from the  
11 child's parents, including in residential child care facilities, without a license. R.I.  
12 Gen. Laws § 42-72.1-4(a).

13 326. Rhode Island's Department of Children, Youth, and Families is the  
14 agency responsible for the licensing of residential child care facilities and group  
15 homes (the characteristics of the group homes licensed by Rhode Island are diverse;  
16 each group home setting differs based on the characteristics of the group served and  
17 the needs of each group).

18 327. For those who wish to receive a license to operate a child day care  
19 center or a group family day care home, an application must be submitted to the  
20 Department of Children, Youth, and Families. *See* R.I. Gen. Laws § 42-72.1-  
21 5(2)(b)-(c). As part of the application process, a facility must submit  
22 documentation including criminal history affidavits for all operators and  
23 employees, as well as criminal records checks; behavior management and crisis  
24 intervention policies; restraint and seclusion policies; documentation of completion  
25 of training in crisis intervention, restraint, and seclusion; and documentation of  
26 licensure of the clinical supervisor or director, confirming that they are a licensed  
27 practitioner of the healing arts.

28 328. In order to enforce its licensing requirements, Rhode Island's



1 Department of Children, Youth, and Families may investigate any complaint  
2 alleging a violation of the Residential Child Care Regulations for Licensure, which  
3 is referred to the Licensing Division for investigation.

4 329. If the facility does not correct a violation, the Licensing Administrator  
5 may initiate action to suspend, revoke or continue the license on Probationary  
6 Status. 214-40 R.I. Code R. § 00-4.2.4(A). Rhode Island's Department of  
7 Children, Youth, and Families is also empowered to investigate complaints that  
8 allege a child has been abused and/or neglected in a facility, with such complaints  
9 referred to Child Protective Services. *Id.* § 00-4.2.4(B). In order to enforce its  
10 licensing provisions appropriately, the Department of Children, Youth, and  
11 Families is legally authorized to assess administrative penalties for violations. R.I.  
12 Gen. Laws § 42-72.11-7. In addition, the Licensing Administrator may also, after  
13 notice and a hearing on alleged violations, revoke a license, or suspend the license  
14 for a period not exceeding six months. *Id.* § 42-72.1-6.

15 330. The rights and privileges available to Rhode Island children, including  
16 immigrant children physically present in Rhode Island, as outlined above, are not  
17 required by the Rule and are currently unavailable to those same children under  
18 ICE's Residential Standards.

19 331. Rhode Island does not have a statutory or regulatory licensing scheme  
20 for facilities that detain family units with adult parents or guardians. Accordingly,  
21 there are no such facilities in Rhode Island.

22 332. By creating an alternate licensing scheme to allow family detention in  
23 locked facilities in Rhode Island—to be overseeing by a federal contractor rather  
24 than the Rhode Island Department of Children, Youth, and Families and with  
25 standards far short of those required for dependent children under Rhode Island  
26 law—the Rule undermines Rhode Island's ability to enforce its state laws and  
27 procedures for ensuring child welfare.

28 333. In addition, because of the Rule, children who otherwise may have

1 been placed in Rhode Island-licensed care under the supervision of the Department  
 2 of Children, Youth, and Families will be held in federal family detention facilities  
 3 either within or outside of Rhode Island.

4 **R. The Rule Conflicts with Vermont’s Child Welfare Policy,**  
 5 **Licensing, and Enforcement**

6 334. The State of Vermont has a fundamental, sovereign interest in the  
 7 welfare of children and families. Vermont has the authority and obligation to  
 8 intervene where children are “without proper parental care or subsistence,  
 9 education, medical, or other care necessary for [their] well-being.” Vt. Stat. Ann.  
 10 tit. 33, § 5102(3)(B). That duty includes bearing “such expenses for the proper  
 11 care, maintenance, and education of a child, including the expenses of medical,  
 12 surgical, or psychiatric examination or treatment” as deemed necessary in  
 13 connection with juvenile care proceedings. *Id.* § 5116(a). Vermont strives to place  
 14 children in community-based placements before placing children in group care or  
 15 out-of-state facilities.

16 335. Where children require foster care, Vermont strives to ensure their  
 17 placement in a healthy, loving environment through strict licensing requirements.  
 18 *See* Vt. Stat. Ann. tit. 33, § 4905; 12-3 Vt. Code R. § 508. No license to operate a  
 19 child residential care facility can be issued until an application is submitted to the  
 20 Department of Children and Families and the Residential Licensing Unit conducts  
 21 an inspection of the facility, assesses it for compliance with licensing regulations,  
 22 and provides any needed consultation. Facilities are required to conduct  
 23 background checks, including checks of the Vermont Criminal Information Center,  
 24 the Vermont Child Protection Registry, and the Adult Abuse Registry, and maintain  
 25 documentation to be made available to licensing upon request. *Id.* § 12-3-508:412,  
 26 413. Once a license is issued, the Residential Licensing Unit of the Department of  
 27 Children and Families has the right to enter and inspect the facility and to interview  
 28 any employee of the program or child in its care. *Id.* § 12-3-508:102-03. In

1 addition, the facility must cooperate fully in investigations of any complaint or  
2 allegation associated with the program. *Id.* § 508:121.

3 336. For youth charged with delinquencies or adjudicated delinquent,  
4 before a youth can be placed in a secure facility, Vermont requires a finding from  
5 either a court or an administrative hearing officer that no other suitable placement is  
6 available and that the child presents a risk of injury to himself or herself, to others,  
7 or to property. Vt. Stat. Ann. tit. 33 § 5291.

8 337. Vermont prohibits persons and entities from operating community care  
9 facilities, which includes child residential treatment programs and the foster family  
10 agencies that place children in resource family homes, without a license. *See, e.g.*  
11 Vt. Stat. Ann. tit. 33, § 2851; 12-3 Vt. Code R. §§ 500, 508:101.

12 338. Neither the Rule nor ICE's Residential Standards require the  
13 development of individualized plans to support each child's development, as  
14 required by the Flores agreement and Vermont law.

15 339. Neither the Rule nor ICE's Residential Standards allow children  
16 independence appropriate to their age, maturity, and capability—including the right  
17 to leave the facility in which they are housed—as required by Vermont law.

18 340. Vermont does not have a statutory or regulatory licensing scheme for  
19 facilities that detain family units. Accordingly, there are no such facilities in  
20 Vermont.

21 341. By creating an alternate licensing scheme to allow family detention in  
22 locked facilities in Vermont—to be overseen by a federal contractor rather than the  
23 Vermont Department of Children and Families and with standards far short of those  
24 required for dependent children under Vermont law—the Rule undermines  
25 Vermont's ability to enforce its state laws and procedures for ensuring child  
26 welfare.

27 342. In addition, because of the Rule, children who otherwise may have  
28 been placed in Vermont-licensed care will be held in federal family detention

1 facilities either within or outside of Vermont.

2 **S. The Rule Conflicts with Virginia’s Child Welfare Policy,**  
3 **Licensing, and Enforcement**

4 343. As a matter of state policy, Virginia seeks to ensure that its child  
5 welfare system promotes the safety, permanency, and well-being of children and  
6 families in Virginia. As part of its longstanding child welfare system, Virginia  
7 maintains a comprehensive licensing scheme for all placements used to house  
8 children within its boundaries, which is contained in Title 63.2 of the Code of  
9 Virginia and Title 22 Agency 40 of the Virginia Administrative Code. While  
10 Virginia seeks to prevent or eliminate the need for out-of-home placements of  
11 children, any out-of-home placement of children must be in the “least restrictive,  
12 most family like setting consistent with the best interests and needs of the child.”  
13 22 Va. Admin. Code § 40-201-40(B)(2). Placement in residential care must be  
14 consistent with the documented needs of the child and the most appropriate  
15 placement to meet those needs. Family-centered and community-based services,  
16 practices, and supports should be provided for the child to maintain permanent  
17 connections with his or her family, with relationships important to the child, and  
18 with the community.

19 344. The Virginia Department of Social Services is the state agency that  
20 administers the child welfare program in Virginia. The Virginia Department of  
21 Social Services is responsible for ensuring the safety and well-being of children  
22 placed in out-of-home care facilities. Its responsibilities include licensing,  
23 monitoring, and enforcing standards for children’s residential facilities, child-  
24 placing agencies, and independent foster homes. These functions include  
25 (1) conducting background checks for residential employees and volunteers and  
26 individuals residing in foster and adoptive homes, (2) issuing licenses or advising  
27 of denial, (3) conducting unannounced inspections to determine compliance,  
28 (4) investigating complaints and suppressing illegal operations, (5) enforcement

1 action as warranted, (6) training for license applicants and licensed providers,  
2 (7) providing compliance support and assistance, and (8) processing variance  
3 requests. Local departments of social service investigate reports of child abuse and  
4 neglect in regulated care. Failure to maintain substantial compliance with standards  
5 or applicable requirements of the Code of Virginia constitutes grounds for  
6 revocation of a license.

7 345. Virginia's oversight of facilities providing care to children includes at  
8 least two licensees that serve unaccompanied immigrant children pursuant to  
9 contracts with ORR. These licensees house unaccompanied immigrant youth in a  
10 temporary emergency shelter and provide placements in foster homes.

11 346. Virginia prohibits persons and entities from operating community care  
12 facilities, which include children's residential facilities, child-placing agencies that  
13 place children in foster homes or independent living arrangements, and independent  
14 foster homes, without a license. Va. Code Ann. § 63.2-1701.

15 347. Virginia law requires children's residential facilities to develop and  
16 maintain individualized service plans, provide case management services,  
17 structured program of care, and mother/baby programs not required by the Rule and  
18 unavailable under ICE's Residential Standards.

19 348. Virginia does not license secure facilities for the detention of  
20 dependent children. However, Virginia maintains regulatory standards that protect  
21 the rights of children detained in secure facilities. Virginia law requires secure  
22 juvenile detention facilities to develop and maintain individualized service plans,  
23 provide case management services, and progress reports not required by the Rule  
24 and unavailable under ICE's Residential Standards. Accordingly, Virginia youth in  
25 juvenile justice detention facilities enjoy rights that would be unavailable to  
26 children detained in federal family detention facilities.

27 349. Virginia does not have a statutory or regulatory licensing scheme for  
28 facilities that detain family units with adult parents or guardians. During a period

1 of detention authorized by the juvenile justice system, Virginia prohibits the  
 2 confinement of any child in any detention facility that detains adults. Va. Code  
 3 Ann. § 16.1-247. Accordingly, there are no such facilities in Virginia.

4 350. By creating an alternate licensing scheme to allow family detention in  
 5 locked facilities in Virginia—to be overseen by a federal contractor rather than the  
 6 Virginia Department of Social Services and Virginia Department of Juvenile Justice  
 7 and with standards far short of those required for dependent children under Virginia  
 8 law—the Rule undermines Virginia’s ability to enforce its state laws and  
 9 procedures for ensuring child welfare.

10 351. In addition, because of the Rule, children who otherwise may have  
 11 been placed in Virginia-licensed or state-regulated care will be held in federal  
 12 family detention facilities either within or outside of Virginia.

13 **T. The Rule Conflicts with Washington’s Child Welfare Policy,**  
 14 **Licensing, and Enforcement**

15 352. In Washington State, legislative policies concerning children  
 16 unambiguously promote the best interests of the child. *See, e.g.*, Wash. Rev. Code  
 17 § 26.09.002 (child’s best interests is standard for court evaluating parenting  
 18 determinations); *id.* § 13.34.020 (child’s best interests and rights to nurturing,  
 19 health, and safety are paramount and trump parental legal rights); *id.* § 13.43.136  
 20 (out of home child placements and permanency plans are driven by the best  
 21 interests of the child; child placements should promote continuity of schooling,  
 22 neighborhood unless child’s best interests require otherwise). Washington’s  
 23 Department of Children, Youth, and Families was recently created to be a  
 24 comprehensive agency exclusively dedicated to the social, emotional and physical  
 25 well-being of children, youth, and families. As Washington’s newest agency, the  
 26 Department of Children, Youth, and Families oversees several services previously  
 27 offered through the state Department of Social and Health Services.

28 353. Washington policy prohibits the use of restrictive out of home

1 placements for children except under circumstances where the child's safety is at  
2 risk or where the child is involved with the juvenile justice system. Even in the  
3 latter situation, the Department of Children, Youth, and Families promotes the least  
4 restrictive placement. For example, the Department of Children, Youth, and  
5 Families' Office of Juvenile Justice works to eliminate the placement of non-  
6 offending youth (such as a dependent or neglected child) and status offenders (such  
7 as a runaway or truant) in secure facilities within the State. Likewise, the  
8 Washington State Partnership Council on Juvenile Justice has adopted the Annie E.  
9 Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). The JDAI,  
10 which recognizes the permanent damage to children that incarceration entails,  
11 promotes safely keeping youth in their homes, schools, and communities rather  
12 than in secure facilities.

13 354. Where children are placed in non-secure residential facilities outside  
14 the care of their parents, Washington safeguards the health, safety, and well-being  
15 of children by ensuring that agencies meet the minimum standards for the care of  
16 children. The Washington legislature has authorized the Department of Children,  
17 Youth, and Families to establish minimum licensing requirements for agencies and  
18 individuals, and to regulate the licensure of these child care facilities. Wash. Rev.  
19 Code § 74.15.030. The Department of Children, Youth, and Families' paramount  
20 concern and obligation is to "safeguard the health, safety, and well-being of  
21 children." *Id.* § 74.15.010(1). The Department of Children, Youth, and Families is  
22 charged with ensuring that licensed facilities meet the needs of children in their  
23 care, including children placed there by ORR.

24 355. Washington law requires that any facility that "receive[s] children . . .  
25 for care" away from their parents must be licensed. Wash. Rev. Code § 74.15.090.  
26 Washington's detailed licensing scheme governs: (a) the licensing process;  
27 (b) minimum staff qualifications; (c) staff training and professional development,  
28 (d) facility environment and space, including toilet and bathing facilities, indoor



1 and outdoor recreation areas, bedrooms, laundry facilities, and premises security;  
2 (e) elements of daily care including youth supervision, transportation, personal  
3 belongings, hygiene, food and meals, special diets, medical care, and discipline;  
4 (f) records management and reporting obligations; and (g) the license complaint and  
5 revocation processes. Wash. Admin. Code §§ 110-145-1310 -1885.

6 356. The Department of Children, Youth and Families conducts periodic  
7 licensing visits and youth interviews at youth group care facilities to ensure that the  
8 facility is providing a “healthy, age-appropriate home-like environment” that  
9 identifies and meets the “medical, psychological, physical and developmental  
10 needs” of children placed in their care. Wash. Admin. Code §§ 110-145-1745, 110-  
11 145-1350. Licensing visits verify that licensed group care facilities are aware of  
12 and provide for the cultural, social, and emotional needs of the children in their  
13 care. Licensors also confirm that licensees consider the religious, educational, and  
14 recreational needs of youth.

15 357. Youth group care facilities that are licensed in Washington are  
16 required to accord the Department of Children, Youth and Families “the right of  
17 entrance and the privilege of access to and inspection of records for the purpose of  
18 determining whether or not there is compliance with the provisions of  
19 [Washington’s child welfare laws].” Wash. Rev. Code § 74.15.080. Washington’s  
20 licensing rules require that the Department of Children, Youth and Families must  
21 have access “to your facility, staff, and the children in your care at any time.”  
22 Wash. Admin. Code § 110-145-1350.

23 358. Washington does not have a similar statutory or regulatory licensing  
24 scheme for facilities that house family units. Accordingly, there are no such  
25 facilities in Washington. The Rule and ICE’s Residential Standards do not address  
26 the needs of children in care with the same protections as those provided by  
27 Washington.

28 359. By creating an alternate licensing scheme to allow family detention in

1 locked facilities in Washington—to be overseen by a federal contractor rather than  
 2 the Department of Children, Youth and Families with standards far short of those  
 3 required for dependent children under Washington law—the Rule undermines  
 4 Washington’s ability to enforce its state laws and procedures for ensuring child  
 5 welfare.

6 360. In addition, because of the Rule, children who otherwise may have  
 7 been placed in Washington-licensed care will be held in federal family detention  
 8 facilities either within or outside of the state

9 **VIII. HARMS TO CHILDREN AND FAMILIES IN DETENTION RESULTING FROM**  
 10 **THE RULE WILL BE BORNE BY THE STATES**

11 361. Every year thousands of children and adults are released from  
 12 immigration detention and become residents of the States, who in turn provide  
 13 services and support to the new aspiring Americans. The harm children and their  
 14 parents will suffer as a result of the Rule will be borne in part by the States and  
 15 local communities that will welcome them as new residents.

16 362. In the 2017 fiscal year, almost 15,000 immigrant children arriving with  
 17 their families who spent time at one of ICE’s family detention facilities received  
 18 positive credible fear determinations and were released from federal custody. *See*  
 19 *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied*  
 20 *Alien Children*, 83 Fed. Reg. 45486, 45519 (proposed Sept. 7, 2018).

21 **A. California**

22 363. Every year thousands of children are released from immigration  
 23 detention and reunified with family members or other adult sponsors in California.  
 24 These children become residents of the State, attend California schools and, in  
 25 some cases, grow into adults raising their own families.

26 364. More unaccompanied immigrant children have been placed in  
 27 California than in any other state in the country since Fiscal Year 2015, including  
 28 7,381 children in Fiscal Year 2016, 6,268 children in Fiscal Year 2017, 4,655

1 children in Fiscal Year 2018, and 6,347 children as of June 2019 in Fiscal Year  
2 2019.

3 365. California reasonably believes that immigrant families who are held in  
4 family detention facilities under the Rule and obtain protection from deportation  
5 will settle in California upon their release from federal custody.

6 366. Aware of the trauma that that families fleeing persecution have faced,  
7 California has adopted policies and programs to support immigrant families and  
8 children. As such, immigrant children arriving in California, including those that  
9 ICE holds in family detention facilities, have access to a number of state-funded  
10 resources.

11 367. All children in California, including immigrant children, are entitled to  
12 a free public education. Per pupil expenditures in 2017-18 exceeded \$14,000 per  
13 child from all funding sources. Of this total, over 91% came from state and local  
14 resources. Schools throughout California also offer services that help their  
15 students, including immigrant children, cope with trauma. For example, the Los  
16 Angeles Unified School District's School Mental Health department employs over  
17 400 psychiatric social workers, psychiatrists, and support staff. These individuals  
18 partner with educational professionals to address barriers that prevent students from  
19 learning to optimize their academic achievement, including the impact of trauma on  
20 a child's educational achievement.

21 368. The California Department of Public Health administers health and  
22 mental health programs that are accessible to immigrants. Its Office of Health  
23 Equity (OHE) is charged with aligning state resources and programs to achieve the  
24 highest level of health and mental health for all people with special attention to  
25 those in vulnerable communities, which by statute includes immigrants and  
26 refugees. OHE also administers the Mental Health Services Act-funded California  
27 Reducing Disparities Project, which seeks to improve mental health outcomes in  
28 unserved, underserved, and inappropriately served communities that include

1 immigrants and refugees.

2       369. California's Refugee Programs Bureau, which is part of the  
3 Immigration and Refugee Programs Branch of the California Department of Social  
4 Services, also provides assistance to newly arrived refugees to support long term  
5 social and economic integration. In fiscal year 2017, at least 12,058 refugees  
6 arrived in California, and received assistance from the State in the form of nutrition  
7 aid, cash assistance, employment services, immigration legal services, medical  
8 services, and educational support. The Bureau administers the Unaccompanied  
9 Refugee Minors (URM) Program, the Refugee School Impact Grant (RSIG), and  
10 the California Newcomer Education and Well-Being (CalNEW), three programs  
11 exclusively for children. Through RSIG and CalNEW, the RPB funds programs in  
12 schools to provide supplementary educational and social adjustment support  
13 services including academic, English-language acquisition, and mental and well-  
14 being supports. CalNEW is funded exclusively by the State.

15       370. California will continue to welcome immigrant children to the State,  
16 and children who are subjected to prolonged and indefinite family detention under  
17 the Rule will continue to settle in California. The psychological and developmental  
18 harms suffered by children in prolonged and indefinite family detention under the  
19 Rule will impact California's schools and communities. As their needs grow due to  
20 harm suffered under the Rule, California's costs in serving this vulnerable  
21 population will also grow.

22       371. California is home to many adult relatives and family friends who  
23 could provide loving and stable homes to children whose parents are being  
24 detained. The use of federal family detention facilities to house children that are  
25 apprehended with a parent will prevent those children being released to sponsors in  
26 California, even if their parents would prefer to have them released to a trusted  
27 adult. This denies parents in detention and potential caregivers in California from  
28 making choices regarding family integrity and harms California families and

1 communities.

2 **B. Massachusetts**

3 372. Massachusetts is home to many robust immigrant communities, with  
4 particularly large populations of residents from Honduras, Guatemala, and El  
5 Salvador. For example, Massachusetts has the eighth largest Salvadoran population  
6 in the country. Each year Massachusetts welcomes these and other immigrants,  
7 who attend public schools, access health care, and plant roots and raise families.

8 373. Massachusetts reasonably believes that immigrant families who are  
9 held in family detention facilities under the Rule and obtain protection from  
10 deportation will settle in Massachusetts upon their release from federal custody.

11 374. In Massachusetts, all children are entitled to a free public education,  
12 regardless of immigration status. On average, annual per-pupil expenditures  
13 amount to more than \$16,000. Of this total, over 95% comes from state and local  
14 funding sources, with 39% from the state alone. In Massachusetts's mid-sized  
15 cities, where a higher proportion of immigrants live, state funding amounts to a  
16 higher percentage of total per-pupil spending. In addition to resourcing general  
17 education teachers, administrators, and materials, the state provides funding to help  
18 schools address the social-emotional needs of students, including students who  
19 have experienced trauma. For students whose needs make them eligible, the state  
20 provides additional funding for special education services.

21 375. All children in Massachusetts, including those who are undocumented,  
22 are eligible for state-provided health insurance if they meet income eligibility  
23 requirements or if they do not have access to other health care coverage.

24 Undocumented children, specifically, may be eligible through the Children's  
25 Medical Security Plan or MassHealth Limited. These children will sometimes seek  
26 and receive mental health services through these state-funded insurance programs.

27 376. Undocumented and other immigrant children who are not eligible for  
28 mental health services through state-funded health insurance programs may qualify

1 for mental health services through the state's Department of Mental Health. Under  
 2 its statutory mandate, the Department of Mental Health provides or arranges for the  
 3 provision of services to residents who meet certain clinical criteria. Mass. Gen.  
 4 Laws ch. 19, § 1. For Massachusetts youth to meet Department of Mental Health  
 5 clinical criteria, they must have a "serious emotional disturbance . . . that has lasted  
 6 or is expected to last at least one year [and] has resulted in functional impairment  
 7 that substantially interferes with or limits the child's [or] adolescent's role or  
 8 functioning in family, school or community activities . . .". 104 Code Mass. Regs.  
 9 20.04(2)(b). Many children held in long-term detention under conditions of care  
 10 that fall short of the *Flores* requirements may suffer from such disturbances.

11 377. It is the policy of Massachusetts state government "to assure every  
 12 child a fair and full opportunity to reach [their] full potential . . .". Mass. Gen.  
 13 Laws Ch. 15D, § 1. Under Massachusetts's licensure regulations, residential  
 14 programs for children in state custody must pursue standards and practices that  
 15 fulfill certain goals, including "to provide each resident with the least intrusive  
 16 intervention sufficient to insure her or his safety, the safety of others, and promote  
 17 healthy growth and development." 606 Code Mass. Regs. 3.01(e).

### 18 **C. Connecticut**

19 378. Connecticut is home to more than 31,000 immigrant children under the  
 20 age of 18. Between October 1, 2018 and May 31, 2019, 590 unaccompanied  
 21 immigrant children were placed with sponsors in Connecticut—a higher number,  
 22 relative to the state's population, than in many more populous states. These  
 23 children become residents, attend Connecticut schools, and, in some cases, grow  
 24 into adults raising their own families in Connecticut.

25 379. Connecticut reasonably believes that immigrant families who are held  
 26 in family detention centers under the Rule and obtain protection from deportation  
 27 will settle in Connecticut upon their release from federal custody.

28 380. Connecticut believes that all government services and supports

1 provided to children should be informed by an appreciation of childhood trauma  
2 and the impact that trauma can have on a child's safety, health, and education. The  
3 need for a trauma-informed approach is particularly acute with immigrant families  
4 and children, many of whom have come to Connecticut fleeing persecution and  
5 seeking shelter from fear.

6 381. All children in Connecticut, including immigrant children, are entitled  
7 to a free public education. Connecticut has more than 32,000 immigrant children in  
8 its public schools, who account for more than 5% of the total public school  
9 population. Per pupil expenditures for Connecticut public school students in 2017-  
10 18 was more than \$19,000, of which more than 95% came from state and local  
11 resources. In keeping with the state's commitment to a trauma-focused approach,  
12 schools throughout Connecticut offer services and supports that help their students,  
13 including immigrant children, cope with trauma. For example, public school  
14 systems in New Britain and New Haven, both of which have relatively large  
15 populations of immigrant children, have dedicated public resources to supporting  
16 district-wide projects that aim to provide intensive resources and trauma-informed  
17 supports to youth who have experienced trauma.

18 382. Connecticut's Department of Social Services administers,  
19 Connecticut's state-subsidized health insurance programs for low-income people.  
20 Through these programs, Connecticut has chosen to expand health care supports,  
21 including mental health supports, for low-income immigrant asylum-seeking  
22 children by waiving the five-year waiting period for Medicaid eligibility. This  
23 means that many asylum-seeking children who have undergone trauma can receive  
24 state-funded mental health services even before achieving legal status.

#### 25 **D. Delaware**

26 383. In Fiscal Year 2019 so far, 311 unaccompanied immigrant children  
27 have been placed with family members and other adult sponsors in the State of  
28 Delaware.



1           384. Delaware reasonably believes that immigrant families who are held in  
2 family detention facilities under the Rule and obtain protection from deportation  
3 will settle in Delaware upon their release from federal custody.

4           385. All children in Delaware, including immigrant children, are entitled to  
5 a free public education. Del. Const. art. X; Del. Code Ann. tit. 14, § 202. Per pupil  
6 expenditures in 2016-17 were \$14,132 per child from all funding sources. Of this  
7 total, over 91% came from state and local funding sources. Schools throughout  
8 Delaware also provide educational programs for English Language Learners,  
9 defined as students with limited English proficiency who, by reason of foreign birth  
10 or ancestry, speak a language other than English and either comprehend, speak,  
11 read, or write little or no English, or who have been identified as English Language  
12 Learners by a valid English language proficiency assessment approved by the  
13 Department of Education for use statewide. 14 Del. Admin Code § 920.

14           386. Immigrant families living in Delaware may benefit from all services  
15 offered by the state's Department of Services for Children, Youth, and Their  
16 Families to Delaware children and families, regardless of their citizenship status.  
17 These services include: protective services, preventive and reunification services,  
18 home-based services, inpatient and outpatient mental health services, outpatient  
19 substance use treatment services, residential and institutional facilities, probation  
20 and aftercare, adoption and permanency planning, foster care, and independent  
21 living services. Pursuant to its Non-Discrimination Policy, the Department of  
22 Services for Children, Youth, and Their Families does not exclude persons from  
23 participating in, or receiving benefits from, their programs or activities due to the  
24 "person's race, color, [or] national origin . . . ." In furtherance of this policy, the  
25 state's Division of Family Services does not inquire about the citizenship of the  
26 children and families they serve. Likewise, the Division of Prevention &  
27 Behavioral Health Services provides an array of voluntary in- and outpatient  
28 treatment and prevention services for children and youth throughout the State of

1 Delaware, including immigrant children, for their mental health, substance use, and  
 2 behavioral health needs. Since 2014, Delaware has appropriated \$565.76 million to  
 3 fund programs for children and families residing in Delaware, to assist with their  
 4 mental health, behavioral health, family stabilization, and youth rehabilitation  
 5 needs. Delaware has appropriated more than \$81 million for Fiscal Year 2019,  
 6 alone.

#### 7 **E. District of Columbia**

8 387. ORR places hundreds of unaccompanied children with sponsors in the  
 9 District of Columbia every year. For Fiscal Year 2019 so far, ORR has placed  
 10 more than 230 children with District of Columbia resident sponsors. *See* U.S.  
 11 Dep't of Health & Hum. Servs., Off. of Refugee Resettlement, *Unaccompanied*  
 12 *Alien Children Released to Sponsors By State* (July 26, 2019),  
 13 [https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state)  
 14 [sponsors-by-state](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state). These children become residents of the District, attend District  
 15 schools and, in some cases, grow into adults raising their own families in the  
 16 District.

17 388. The District reasonably believes that immigrant families who are held  
 18 in family detention centers under the Rule and obtain protection from deportation  
 19 will settle in the District upon their release from federal custody.

20 389. All children in the District, including immigrant children, are entitled  
 21 to a free public education. In Fiscal Year 2019, the District allocated between  
 22 \$10,658 and \$15,348 per student in DC Public Schools. *See* D.C. Off. of the Chief  
 23 Fin. Officer, Public Schools FY 2019 Proposed Budget and Financial Plan, 14,  
 24 [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ga\\_dcps\\_](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ga_dcps_chapter_2019j.pdf)  
 25 [chapter\\_2019j.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ga_dcps_chapter_2019j.pdf). In addition, the District allocated more than \$5,000 for each  
 26 English Language Learner in DC Public Schools, more than \$2,000 per At-Risk  
 27 student, between \$10,338 and \$37,196 per student in Special Education, and up to  
 28 \$5,233 per student receiving extended school year services. *Id.* Per-student

1 spending in DC Public Charter Schools was on par with these numbers. *See* D.C.  
 2 Off. of the Chief Fin. Officer, Public Charter Schools FY 2019 Proposed Budget  
 3 and Financial Plan, 5,  
 4 [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/gc\\_dcpcs](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/gc_dcpcs_chapter_2019j.pdf)  
 5 [\\_chapter\\_2019j.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/gc_dcpcs_chapter_2019j.pdf). The overwhelming share of the money spent on public  
 6 education in the District comes from local taxes, fees, and resources. *Id.* at 1-3;  
 7 D.C. Off. of the Chief Fin. Officer, Public Schools FY 2019 Proposed Budget and  
 8 Financial Plan, 2,  
 9 [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ga\\_dcps\\_](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ga_dcps_chapter_2019j.pdf)  
 10 [chapter\\_2019j.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ga_dcps_chapter_2019j.pdf).

11 390. The District of Columbia offers comprehensive health insurance  
 12 coverage to eligible immigrants. The Immigrant Children's Program and the DC  
 13 Healthcare Alliance Program provide coverage equal to that offered by Medicaid,  
 14 including doctor visits, immunizations, mental health services, dental, vision, and  
 15 prescription drugs. *See* D.C. Dep't of Health Care Fin., Immigrant Children's  
 16 Program, <https://dhcf.dc.gov/service/immigrant-childrens-program> (last visited  
 17 Aug. 23, 2019); D.C. Dep't of Health Care Fin., Health Care Alliance,  
 18 <https://dhcf.dc.gov/service/health-care-alliance> (last visited Aug. 23, 2019).

19 391. The District also provides funding for legal services providers who  
 20 serve the immigrant community in the District through the Immigrant Justice Legal  
 21 Service Grant Program. In Fiscal Year 2018, \$500,000 of funding was made  
 22 available to fund programs that provide targeted services and resources to the  
 23 District's immigrant population. The amount of funding for the grant program has  
 24 increased every year since. In Fiscal Year 2019, the funding increased to \$900,000,  
 25 and for Fiscal Year 2020, the funding increased to \$2.5 million. *See* Peter A. Tatian  
 26 et al., *State of Immigrants in the District of Columbia*, Urb. Inst., 17 (Dec. 2018);  
 27 Press Release, Office of the Mayor, *Mayor Bowser Announced \$2.5 Million*  
 28 *Available for FY 2020 Immigrant Justice Legal Services Grant Program* (July 12,

2019), <https://mayor.dc.gov/release/mayor-bowser-announces-25-million-available-fy-2020-immigrant-justice-legal-services-grant>. Grants are provided to support a variety of services and projects, including legal representation, filing applications for S, T, U, Special Immigrant Juvenile visas and Violence Against Women Act (VAWA) petitions, and filing asylum applications and providing legal representation.

392. The District also provides grants totaling close to \$2 million to various organizations that provide needed services to the myriad immigrant populations in the District. *See* Peter A. Tatian et al., *State of Immigrants in the District of Columbia*, Urb. Inst., 16 (Dec. 2018), [https://www.urban.org/sites/default/files/publication/99031/state\\_of\\_immigrants\\_in\\_dc\\_brief.pdf](https://www.urban.org/sites/default/files/publication/99031/state_of_immigrants_in_dc_brief.pdf). This funding includes grants to the Asylum Seekers Assistance Project, as well as organizations that provide health and social services, education, language access, housing services, and employment assistance. *Id.*

#### **F. Illinois**

393. ORR releases hundreds of children into Illinois each year. In Fiscal Year 2019, ORR statistics indicate that ORR placed 659 unaccompanied immigrant children in Illinois, the state's highest number of the past five years.

394. Illinois reasonably believes that immigrant families who are held in family detention facilities under the Rule and obtain protection from deportation will settle in Illinois upon their release from federal custody.

395. In Illinois, all children are entitled to a free public education regardless of immigration status. In the 2017-2018 school year, the operating expense per pupil in Illinois was \$13,763.50. Public education funding in Illinois comes from a combination of local, state, and federal sources. Illinois offers other educational benefits to students regardless of immigration status; for example, a 2019 law allows undocumented immigrants to receive state-funded student financial aid to attend college. *See* Retention of Illinois Students and Equity Act, Pub. Act 101-021,

1 101st Gen. Assemb. (Ill. 2019).

2 396. Illinois provides a wide range of other programs and services  
3 specifically for immigrants. These include the Immigrant Family Resource  
4 Program, which helps limited-English-proficient low-income individuals apply for  
5 public benefits and human services; Illinois Welcoming Centers, which serve as  
6 one-stop service centers to link immigrants to human services, either provided by  
7 grantees or external resources in the community; the Refugee Resettlement  
8 Program, which since 1975 has provided short-term financial assistance, health  
9 screening, and employment and social service programs such as mental health and  
10 senior support to refugees, asylees, victims of human trafficking, and Cuban and  
11 Haitian entrants to the U.S.; and the New Americans Initiative, an integrated  
12 campaign that assists immigrants in preparing to become U.S. citizens.

13 **G. Maine**

14 397. Every year children are released from immigration detention and  
15 placed with sponsors in Maine, including 11 unaccompanied immigrant children  
16 released to sponsors in Maine in Fiscal Year 2017, and 21 unaccompanied  
17 immigrant children released to sponsors in Maine in Fiscal Year 2018. As of June  
18 30, 2019, 14 unaccompanied immigrant children were released to sponsors in  
19 Maine during Fiscal Year 2019.

20 398. Maine reasonably believes that immigrant families who are held in  
21 family detention facilities under the Rule and obtain protection from deportation  
22 will settle in Maine upon their release from federal custody.

23 399. When children are held in immigration detention, the trauma  
24 associated with their flight from home is exacerbated. The negative impacts of  
25 secure detention away from family increase in proportion to the length of time  
26 children spend in detention. The quality of care children receive while in detention  
27 directly affects their physical and mental health both long and short term.  
28 Immigrant children living in Maine, including those released from immigration

1 detention, have access to a number of state-funded services to help address the  
2 effect of trauma.

3 400. All children in Maine, including immigrant children, are entitled to a  
4 free public education. Per pupil expenditures in 2017-18 exceeded \$15,552 from  
5 all funding sources. Of this total, over 88.48% came from state and local  
6 resources. Schools in Maine also offer services that help their students, including  
7 immigrant children, cope with trauma. Local school districts in Maine employ or  
8 contract with professionals, including school nurses and school psychologists and  
9 support staff. These individuals partner with educators to address barriers that  
10 prevent students from learning to optimize their academic achievement, including  
11 addressing the impact of trauma on a child's educational achievement.

12 401. Students with post-traumatic stress disorder and other symptoms  
13 arising from traumatic experiences require specialized instruction, remedial  
14 academic support, and a host of other interventions in order to be successful at  
15 school. Maine's school funding formula ascribes an additional state subsidy for  
16 such students in order to partially compensate local schools for the additional  
17 staffing and services that are necessary.

18 402. Along with the extra state subsidy described above, there is an  
19 additional set of costs related to special education students. The average additional  
20 state subsidy for special education students is approximately \$3000 per year, based  
21 upon the numbers available from the 2017-18 school year funding.

22 403. The Maine Department of Health and Human Services oversees  
23 behavioral health programs for counseling and therapy that are accessible to  
24 immigrants, including immigrant children. Immigrants under the age of 18 years  
25 and pregnant women who have been paroled into the United States can qualify  
26 immediately for medically necessary services, including outpatient and residential  
27 behavioral health services and trauma counseling under Maine's Medicaid program,  
28 known as "MaineCare." Immigrants between the ages of 18 years and 21 years can

1 qualify for MaineCare after having been paroled into the United States for at least  
 2 12 months. In addition, immigrants between the ages of 18 and 21 and pregnant  
 3 women who are in “PRUCOL” status can qualify immediately for MaineCare.  
 4 Currently, Maine’s share of reimbursement for MaineCare services is  
 5 approximately 33.33%.

## 6 **H. Maryland**

7 404. Every year thousands of children are released from immigration  
 8 detention and reunified with family members or other adult sponsors in Maryland.  
 9 Thus far in Fiscal Year 2019, 3,502 children have been released to sponsors in  
 10 Maryland.

11 405. Maryland reasonably believes that immigrant families who are held in  
 12 family detention facilities under the Rule and obtain protection from deportation  
 13 will settle in the Maryland upon their release from federal custody.

14 406. School systems in Maryland have a legal obligation to provide a free,  
 15 public education to all children, including immigrants. Md. Code Ann., Educ. §7-  
 16 101. Maryland spent an average of \$14,484 per pupil in the 2017-2018 school year,  
 17 approximately 94% of which is funded by state and local resources. Maryland  
 18 public schools spend significant funds on mental health services for students,  
 19 including licensed school counselors, Adverse Childhood Experiences trauma  
 20 training, and suicide prevention training.

## 21 **I. Michigan**

22 407. Michigan reasonably believes that immigrant families who are held in  
 23 family detention facilities under the Rule and obtain protection from deportation  
 24 will settle in Michigan upon their release from federal custody.

25 408. The Michigan Constitution states that “[t]he Legislature shall maintain  
 26 and support a system of free public elementary and secondary schools as defined by  
 27 law. Every school district shall provide for the education of its pupils without  
 28 discrimination as to religion, creed, race, color or national origin.” Mich. Const.



1 art. VIII, § 2.

2 409. The Michigan Department of Health and Human Services administers  
3 cash and medical benefits to refugees, including immigrants that have been released  
4 from detention upon gaining asylum protection. Michigan also provides refugee  
5 assistance through private agencies that deliver employment, integration, education,  
6 language, and health-related services, as well as services to elderly refugees.

7 410. Refugees and other eligible immigrants receive medical screening,  
8 medical follow-up services, and referrals for mental health follow-up through state-  
9 funded providers. Mental Health services for immigrants are also provided through  
10 state funds private providers.

#### 11 **J. Minnesota**

12 411. During Fiscal Year 2018, ORR placed 292 children with Minnesota  
13 resident sponsors. As of June 30, 2019, ORR's available data show that Minnesota  
14 has already received 465 unaccompanied children during Fiscal Year 2019.

15 412. Minnesota reasonably believes that immigrant families who are held in  
16 family detention facilities under the Rule and obtain protection from deportation  
17 will settle in Minnesota upon their release from federal custody.

18 413. In Minnesota, all children are eligible to receive a free public  
19 education. On average, per pupil expenditures for state Fiscal Year 2018 was  
20 \$12,596 per pupil. The state Fiscal Year 2019 estimate is \$12,953 per pupil. Of  
21 this total, approximately 96% comes from state and local resources. If, as may be  
22 expected, an immigrant child requires services through the English Learners  
23 program, the state funds an additional \$704 to \$954 per child. Children in  
24 Minnesota, including immigrant children, may also require special education,  
25 mental health services, and other programs delivered within the school district.  
26 Immigrant children may also receive child care assistance in certain settings.

27 414. In addition, immigrants residing in Minnesota are eligible to receive  
28 health care through Minnesota's Emergency Medical Assistance program.

1 Minnesota Emergency Medical Assistance program covers the care and treatment  
2 of emergency medical conditions provided in an emergency department (ED), or in  
3 an inpatient hospital, when the admission is the result of an ED admission.  
4 Emergency medical conditions include labor and delivery.

5 **K. Nevada**

6 415. Nevada reasonably believes that immigrant families who are held in  
7 family detention facilities under the Rule and obtain protection from deportation  
8 will settle in Nevada upon their release from federal custody.

9 416. In Nevada, education is a constitutional right. Nev. Const. art. 11.  
10 The Nevada Constitution prescribes a uniform system of common schools. *Id.* § 2.  
11 All children in Nevada, including immigrant children, are entitled to a free public  
12 education. Currently, Nevada's per pupil expenditures in 2018-19 will exceed  
13 \$10,000 per child from state and local fund sources.

14 417. Nevada funded a minimum of \$9,224,730 during the 2018-2019 school  
15 year for mental health and other support services for students enrolled in schools in  
16 the state. Among other support services, Nevada schools provide programs for  
17 approximately 73,520 students (approximately 15% of the total student population)  
18 who are English language learners. Nevada will have to provide additional state-  
19 funded services to address the trauma suffered by immigrant children who are  
20 subjected to prolonged detention under the Rule prior to entering the Nevada  
21 educational system.

22 **L. New Jersey**

23 418. Every year, thousands of children are released from immigration  
24 detention and ORR shelters and reunified with family members or other sponsors in  
25 New Jersey. Thus far in Fiscal Year 2019, 3,163 unaccompanied children have  
26 been released to the care of sponsors in New Jersey, which places New Jersey  
27 among the top unaccompanied children-hosting states. New Jersey has substantial  
28 policies and programs to support immigrant families and children, including

1 providing access to state resources for education, mental and behavioral health care,  
2 legal support, and social services.

3 419. New Jersey reasonably believes that immigrant families who are held  
4 in family detention facilities under the Rule and obtain protection from deportation  
5 will settle in New Jersey upon their release from federal custody.

6 420. Children residing in New Jersey are eligible for services through the  
7 Division of Child Protection and Permanency and the Division of the Children's  
8 System of Care, regardless of citizenship or national origin. These programs  
9 include mental and behavioral health programs in the community and in emergency  
10 and permanent group home settings.

11 421. All children in New Jersey are entitled to a free public education,  
12 regardless of citizenship or national origin. N.J. Stat. Ann. § 18A:7B-12; N.J.  
13 Admin. Code § 6A:22-3.3. In Fiscal Year 2017-2018, New Jersey school districts  
14 spent an average of almost \$22,000 per pupil on K-12 education costs, funded  
15 through a combination of state and local taxes and federal aid. Additionally, the  
16 New Jersey Dream Act allows undocumented students to qualify for in-state tuition  
17 rates at all of New Jersey's public institutions of higher education, and to apply for  
18 state financial assistance.

19 422. Over 2 million residents of New Jersey are immigrants, refugees, or  
20 other new Americans, who are integral to the State's economy and social and  
21 cultural fabric. To ensure that every resident in New Jersey is valued, supported,  
22 and welcomed, New Jersey is creating an Office of New Americans to empower  
23 immigrants throughout the State, including children, and to promote their well-  
24 being and access to services, resources, and employment. N.J. Exec. Order No. 74  
25 (July 4, 2019). New Jersey prohibits discrimination on the basis of nationality in  
26 employment and all public accommodations. N.J. Stat. Ann. §§10:5-9.1, 10:5-12.

27 423. The New Jersey Department of Human Services will also be resuming  
28 its role as the Statewide Refugee Coordinator and the Statewide Refugee Health

1 Coordinator in October 2019. In this capacity, the State will be responsible for the  
2 submission of a Refugee State Plan to ORR and will assume the responsibility for  
3 all mental and medical health needs for refugee populations in New Jersey,  
4 including unaccompanied children. Qualified immigrants are eligible to receive  
5 New Jersey Temporary Assistance for Needy Families benefits, New Jersey  
6 Medicaid, and CHIP benefits.

7 **M. New Mexico**

8 424. Every year since at least 2014, ORR has placed unaccompanied  
9 immigrant children with sponsors in New Mexico.

10 425. New Mexico reasonably believes that immigrant families who are held  
11 in family detention facilities under the Rule and obtain protection from deportation  
12 will settle in New Mexico upon their release from custody.

13 426. The New Mexico Department of Health has established the Refugee  
14 Health Program for newly-arrived refugees with integrated medical and mental  
15 health screenings. This program serves as an entry point into the U.S. health  
16 system, striving to prevent the transmission of communicable diseases to the public  
17 and ensuring follow-up for conditions that could affect an immigrant's well-being  
18 or impede the newcomer's ability to effectively resettle in New Mexico.

19 427. New Mexico's Refugee Health Program collaborates with a variety of  
20 health and other service providers and community-based organizations to facilitate  
21 access to culturally sensitive and trauma-informed healthcare. Language  
22 interpretation services are available to refugees during all healthcare visits.

23 428. New Mexico provides emergency health care, including labor and  
24 delivery care, for immigrants in New Mexico who do not qualify for Medicaid  
25 because of their immigration status, under its Emergency Medical Services for  
26 Aliens program. *See* N.M. Code R. §§ 8.285.1 *et seq.*, 8.325.10.1 *et seq.*

27 429. Although most immigrants who present at the southern border of the  
28 United States ultimately settle in the 20 largest metropolitan areas of the United

1 States rather than in New Mexico, the State has dedicated generous resources to  
2 help immigrant children and their families released from ICE custody adjust to life  
3 in the United States.

4 430. The State has invested humanitarian aid targeted toward asylum  
5 seekers via its various agencies. The New Mexico Department of Homeland  
6 Security and Emergency Management has dedicated staff time and resources to  
7 respond to human trafficking reports from asylum seekers; the Department of  
8 Workforce Solutions has developed plans to support asylum-seekers; the  
9 Department of Public Safety has undertaken enhanced law enforcement activities;  
10 the Department of Health has deployed of the New Mexico Medical Reserve Corps  
11 to assist with public health issues related to asylum seekers; and the General  
12 Services Division and Department of Transportation have used vans and drivers to  
13 support asylum-seekers. Complaint at ¶ 30, *New Mexico v. McAleenan*, No. 1:19-  
14 CV-00534-JB-LF (D.N.M. filed June 10, 2019). Further, New Mexico has given at  
15 least \$750,000 in emergency grants to local governments in Deming, Luna County,  
16 and Las Cruces near the Mexican border, where most migrant children and families  
17 have been held or released. *Id.* at ¶ 31.

18 431. In New Mexico, where 48.2% of the population identifies as Hispanic  
19 or Latino, cities, counties, and other local governments have contributed tax dollars  
20 in support of migrants released after being held in detention under the new federal  
21 policies. Bernalillo County allocated \$100,000 to fund psychological support  
22 services and crisis debriefing for migrant children and parents from a behavioral  
23 health tax. The County's largest city, Albuquerque, also passed a \$250,000 special  
24 appropriation to contribute to the humanitarian effort. The city of Deming in Luna  
25 County declared a state of emergency to fund shelter care efforts for the influx of  
26 migrant families released there by U.S. Customs and Border Patrol. The City of  
27 Las Cruces near the State's border with Mexico approved a half-million dollar  
28 transfer from the City's health services fund to cover expenses of helping people

1 dropped off by Border Patrol.

2 432. New Mexico provides education and educational services to all  
3 students, including undocumented students, recognizing the fundamental right to  
4 education regardless of immigration status.

5 **N. New York**

6 433. Immigrants are at the heart of New York's rich social diversity and  
7 drive its economy. Approximately 4.5 million immigrants live in New York State.  
8 2.8 million immigrant workers comprise roughly 27.8% of the State's labor force.  
9 In 2014, New York State immigrant-led households paid \$26.5 billion in federal  
10 taxes and \$15.9 billion in state and local taxes with \$103.3 billion in after-tax  
11 income spending power. Recognizing their significance, the State has undertaken  
12 initiatives to protect its immigrant population and foster their contributions to New  
13 York's growth. The State's Office for New Americans assists newcomers through  
14 telephone hotline services directed at reporting immigration assistance services  
15 fraud and other schemes targeting immigrants. The Office of New Americans also  
16 conducts entrepreneurship trainings and facilitates access to other New York State  
17 agency services, such as job-training provided by the New York State Department  
18 of Labor.

19 434. In Fiscal Years 2017 and 2018, ORR placed 3,938 and 2,837 children  
20 with New York resident sponsors, respectively. Between October 2018 and May  
21 2019, ORR placed another 3,824 children with New York resident sponsors.

22 435. New York reasonably believes that immigrant families who are held in  
23 family detention facilities under the Rule and obtain protection from deportation  
24 will settle in New York upon their release from federal custody.

25 436. Children in New York State are entitled to a variety of state-funded  
26 services, including educational services, early intervention services, and access to  
27 healthcare, among others. New York State makes these services available to such  
28 children in support of the State's interest in ensuring the health, safety, and well-

1 being of all residents. Further, after a child enters the community, their home  
2 environment could be disrupted for a number of reasons. If the child subsequently  
3 becomes at risk of entering foster care—for example, because of allegations of  
4 abuse or neglect by their parent or the sponsor now legally responsible for the  
5 child—the child welfare system will provide preventive services to attempt to keep  
6 the child safely in the home; such services are funded, in part, by New York State.  
7 If those services are unsuccessful and the child must be removed from the home,  
8 New York State will also partly fund the child’s placement and needed services  
9 while in the foster system.

10 437. Whether living with their parents, sponsors, or subsequent foster care  
11 providers in the state, accompanied and unaccompanied immigrant children  
12 residing in New York have a right to attend public schools in the state. Moreover,  
13 the Individuals with Disabilities Education Act requires New York to provide  
14 special education services to students with learning or emotional disabilities. New  
15 York State law also entitles qualified students to English Language Learner  
16 services. N.Y. Comp. Codes R. & Regs. tit. 8, § 154. There are 692 public school  
17 districts in New York that serve approximately 2.6 million students. While costs  
18 will vary depending on the school district’s location and the child’s needs, the  
19 statewide average to educate a student in New York is approximately \$23,000 per  
20 year.

21 438. New York State also provides a robust early intervention program,  
22 which accompanied and unaccompanied children utilize when placed in New York  
23 State communities. Each year, New York’s early intervention program serves over  
24 60,000 children ages zero to three who have moderate to severe developmental  
25 delays. The early intervention program includes 1,312 providers that contract with  
26 New York State to bill for EIP services. Total annual expenditures for New York’s  
27 early intervention program total more than \$650 million across all payers—45% is  
28 covered by Medicaid, 2% by commercial insurance, 26% by state funds, and 27%



1 by county funds. While early intervention program costs and services vary based  
2 on the child's needs and the intensity of services offered, for the 2018 program year  
3 the average cost of services delivered ranged from \$5,820 to \$24,744 per child.

4 439. New York State will also incur significant medical expenses for each  
5 child released from prolonged immigration custody, as all children under age 19,  
6 regardless of immigration status, are eligible for the Child Health Insurance  
7 Program in New York. While the Child Health Insurance Program is jointly funded  
8 by federal and state governments, the federal government does not provide any  
9 funding for children it deems "unqualified immigrants." As such, health care  
10 coverage provided to many accompanied and unaccompanied children is covered  
11 entirely with state funds.

12 440. As accompanied and unaccompanied children arrive in New York, the  
13 State will need to provide these children with mental health services to address the  
14 trauma of family detention or their prolonged time in ORR custody, incurring  
15 significant expenses. The New York State Office of Mental Health receives  
16 approximately \$4.4 billion annually in funding to provide mental health programs  
17 and services annually to more than 772,000 individuals in the State. The Office of  
18 Mental Health operates psychiatric centers across the State of New York, and  
19 regulates, certifies, and oversees more than 4,500 programs, which are operated by  
20 local governments and nonprofit agencies. These programs include various  
21 inpatient and outpatient programs and emergency, community support, residential,  
22 and family care programs that are intended to prevent or reduce the disabling  
23 effects of mental illness. Citizenship status, or lack thereof, does not affect the  
24 Office of Mental Health's obligation to provide mental health services to those  
25 residing in the State. *See* N.Y. Comp. Codes R. & Regs. tit. 14 § 27.4.

26 441. The New York State Office of Temporary and Disability Assistance  
27 provides services to refugees and their families to help them achieve economic and  
28 social self-sufficiency through its Refugee Resettlement Program. The Refugee

1 Resettlement Program includes a component that provides services to  
2 Unaccompanied Refugee Minors. If children affected by the Rule acquire an  
3 immigration status qualifying them for refugee treatment and are reclassified as  
4 Unaccompanied Refugee Minors by ORR, then these children could receive  
5 services through this component of the Refugee Resettlement Program, such as  
6 foster placement, healthcare, and educational services geared toward facilitating  
7 independent living and economic self-sufficiency. For State Fiscal Year 2019-  
8 2020, \$26,000,000 has been appropriated in the New York State budget for the  
9 Refugee Resettlement Program.

10 **O. Oregon**

11 442. Every year children are released from immigration detention and  
12 placed with sponsors in Oregon, including 170 unaccompanied immigrant children  
13 in Fiscal Year 2017 and 201 unaccompanied immigrant children in Fiscal Year  
14 2018. As of June 2019, 265 unaccompanied immigrant children have been placed  
15 with sponsors in Oregon during Fiscal Year 2019.

16 443. Oregon reasonably believes that immigrant families who are held in  
17 family detention facilities under the Rule and obtain protection from deportation  
18 will settle in Oregon upon their release from federal custody.

19 444. The Oregon Department of Education provides funding to educate K-  
20 12 children regardless of immigration status. In 2016-17, the cost of that education  
21 was \$11,715 per student. Of this total, 92% came from state and local resources.  
22 Since 2013, Oregon has also provided in-state college tuition benefits regardless of  
23 immigration status in many cases. Children who have been held in long term  
24 detention facilities and are traumatized will require additional state educational  
25 resources. Beginning in 2016 and 2017, the Oregon legislature has funded a pilot  
26 program form trauma-informed care in Oregon schools, administered as a  
27 partnership between the Oregon Department of Education, the Oregon Health  
28 Authority, and Oregon's Chief Education Officer.

1           445. The Oregon Health Authority, though its Cover All Kids program,  
2 provides medical, dental, and mental health benefits to children in certain low  
3 income families regardless of immigration status. In 2018, the average per month  
4 cost was \$184 per child. Children who are wards of the court become eligible for  
5 the Oregon Health Plan regardless of immigration status. The average per month  
6 cost of this coverage was \$664 per child. Children who have been held in long term  
7 detention facilities and are traumatized will require additional state health care  
8 resources.

9           446. The Oregon Department of Human Services coordinates with Refugee  
10 Resettlement Agencies to provide assistance for refugee families in applying for  
11 social services, medical benefits, vocational training, employments supports, and  
12 language training. Families with children who have been held in long term  
13 detention facilities and are traumatized may require state assistance resources.

14           **P. Pennsylvania**

15           447. During Fiscal Year 2018, ORR placed 559 children with Pennsylvania  
16 resident sponsors. ORR has already surpassed that number in Fiscal Year 2019,  
17 having placed 924 children with Pennsylvania resident sponsors as of June 2019.

18           448. Pennsylvania reasonably believes that immigrant families who are held  
19 in family detention facilities under the Rule and obtain protection from deportation  
20 will settle in Pennsylvania upon their release from federal custody.

21           449. Under the Pennsylvania Constitution, the Pennsylvania General  
22 Assembly “shall provide for the maintenance and support of a thorough and  
23 efficient system of public education to serve the needs of the Commonwealth.”  
24 Pa. Const. art. III, § 14. All children in Pennsylvania, including immigrant  
25 children, are entitled to a free public education. 22 Pa. Code § 11.11(a). “A child’s  
26 right to be admitted to school may not be conditioned on the child's immigration  
27 status.” *Id.* § 11.11(d).

28           450. The Pennsylvania Department of Human Services administers cash

1 and medical assistance programs for refugees and asylees residing in Pennsylvania,  
2 including immigrants who have been released from detention upon gaining asylum  
3 protection. The Pennsylvania Department of Education provides a Refugee  
4 Education Program that supports refugee students and their parents. Pennsylvania  
5 also provides refugee assistance through private organizations that deliver  
6 employment, training, language, integration, education, and health-related services,  
7 as well as services to unaccompanied children and elderly refugees.

8 451. Pennsylvania reasonably believes that the psychological and  
9 developmental harms suffered by children in prolonged and indefinite family  
10 detention under the Rule will negatively impact Pennsylvania schools and  
11 communities.

12 **Q. Rhode Island**

13 452. Every year hundreds of immigrant children are released from  
14 immigration detention and placed with family members or other adult sponsors in  
15 Rhode Island. From October 2018 to June 2019, for example, 375 unaccompanied  
16 children were released to adult sponsors in Rhode Island. These children become  
17 residents of the State, attend Rhode Island schools and grow into adults, sometimes  
18 raising their own families.

19 453. Rhode Island reasonably believes that immigrant families who are held  
20 in family detention facilities under the Rule and obtain protection from deportation  
21 will settle in Rhode Island upon their release from federal custody.

22 454. The Rhode Island Constitution provides that “The diffusion of  
23 knowledge, as well as of virtue among the people, being essential to the  
24 preservation of their rights and liberties, it shall be the duty of the general assembly  
25 to promote public schools and public libraries, and to adopt all means which it may  
26 deem necessary and proper to secure to the people the advantages and opportunities  
27 of education and public library services.” See R.I. Const. art. XII, § 1. To  
28 implement this goal, the Rhode Island Constitution also provides for the

1 establishment of a perpetual school fund, and that said funds are to be securely  
2 invested and remain a perpetual fund for that purpose, and the diversion of said  
3 funds for any other purpose whatsoever is prohibited. *Id.* §§ 3, 4.

4 455. All children, including immigrant children, are entitled to the resources  
5 of a public education provided by the State of Rhode Island. For Fiscal Year 2017-  
6 2018, the year for which the most recent data is available, the State of Rhode Island  
7 expended a net amount of \$17,355 per student, a percentage of which comes from  
8 state and local funding sources.

9 456. All public schools in Rhode Island expend public monies for English  
10 Learners, who are usually immigrant children that require assistance with language  
11 acquisition. School districts with public schools that utilize programs for English  
12 Learners are entitled to reimbursement by the state for expenditures for direct  
13 services and instructional programs. 16 R.I. Gen. Laws § 54-4(a).

14 457. The State of Rhode Island also administers The Office of Student,  
15 Community, and Academic Support, which helps to ensure that children with  
16 diverse learning needs and children receiving special education services are  
17 provided equal access to a public education. The Office of Student, Community,  
18 and Academic Support also helps ensure that schools develop effective strategies  
19 for meeting the needs of these unique learners, including providing mental health  
20 services for children who have suffered trauma, if such trauma is reported.

21 458. Last year, approximately 117 minor immigrant children, previously  
22 held in detention at the border of the United States and Mexico, were physically  
23 present in the State of Rhode Island.

24 459. A majority of these children enrolled in Providence public schools,  
25 while several others enrolled in public schools in the cities of Central Falls,  
26 Pawtucket, Woonsocket, Bristol, and Cranston.

27 460. Immigrant families living in Rhode Island may also receive food from  
28 the Rhode Island Community Food Bank, which receives approximately up to

1 4 percent of its funding from the State of Rhode Island.

2 461. Immigrant children living in Rhode Island also have access to mental  
3 health services from the Providence Children and Youth Cabinet, an organization  
4 devoted to helping children who experience trauma to receive mental health-related  
5 services. A portion of the Providence Children and Youth Cabinet's funding is  
6 public and comes directly from the State of Rhode Island.

7 462. In addition to the programs outlined above, the State of Rhode Island  
8 also provides a Refugee Assistance Program, under which the State Refugee  
9 Coordinator within DHS administers federal grants that come to Rhode Island from  
10 the Federal Office of Refugee Resettlement and ensures coordination of public and  
11 private resources in refugee resettlement. Refugees served by the Department are  
12 eligible for cash assistance, medical assistance, and employment planning services.  
13 This year alone, Rhode Island has already resettled approximately 90 refugees, at  
14 least 50 percent of whom were children.

15 463. In addition, there are at least 85 unaccompanied immigrant children  
16 that were transferred from temporary detention at the border into the custody of the  
17 Office of Refugee Resettlement, and who were subsequently released to sponsor  
18 families in the State of Rhode Island, and received post-relief services.

19 464. The State of Rhode Island experiences a direct, fiscal impact when  
20 immigrant families mental and physical health is harmed by prolonged detention in  
21 substandard conditions. Rhode Island willingly provides the services described  
22 above to immigrant families, but the needs of those families will grow in proportion  
23 to the hardship they suffer due to the Rule, with fiscal consequences for Rhode  
24 Island.

25 **R. Vermont**

26 465. Vermont reasonably believes that immigrant families who are held in  
27 family detention facilities under the Rule and obtain protection from deportation  
28 will settle in Vermont upon their release from federal custody.

1           466. The State of Vermont is responsible for protecting the welfare of all  
2 children living in the State. This responsibility includes providing a variety of  
3 services, including, when necessary, substitute care, to ensure the right of any child  
4 living in Vermont to sound health and to normal physical, mental, spiritual, and  
5 moral development. *See* Vt. Stat. Ann. tit. 33, § 101. In appropriate circumstances,  
6 this responsibility includes commencing juvenile judicial proceedings and incurring  
7 significant costs to ensure that children are receiving safe and adequate care. *See*  
8 *generally* Vt. Stat. Ann. tit. 33, §§ 5102, 5103, 5116. If federal policy changes  
9 result in more children residing in the State of Vermont, the State is committed to  
10 ensuring those children are receiving safe and adequate care.

11           467. In Vermont, all children, regardless of immigration status, are entitled  
12 to a free public education. On average, Vermont spends over \$18,000 per pupil  
13 each year. *See* Vt. Agency of Educ., *Per Pupil Spending: FY 2017 Report* (Feb. 21,  
14 2017), <http://education.vermont.gov/documents/data-per-pupil-spending-fy2017>.  
15 State and local revenues account for approximately 94% of total pupil expenditures  
16 (90.3% state, 3.6% local); federal sources account for only 6%. *See* U.S. Census  
17 Bureau, *2017 Annual Survey of School System Finances*, tbl. 5 (2017),  
18 [https://www2.census.gov/programs-surveys/school-finances/tables/2017/secondary-](https://www2.census.gov/programs-surveys/school-finances/tables/2017/secondary-education-finance/elsec17_sumtables.xls)  
19 [education-finance/elsec17\\_sumtables.xls](https://www2.census.gov/programs-surveys/school-finances/tables/2017/secondary-education-finance/elsec17_sumtables.xls).

20           468. Vermont also provides a comprehensive, integrated system of mental  
21 health services from three departments (Education, Mental Health, and Children  
22 and Families). These departments develop a coordinated services plan to assist  
23 children coping with emotional disturbance. *See* Vt. Stat. Ann. tit. 33, §§ 4301-05.

24           469. Many immigrant children are also eligible to receive free or low-cost  
25 health care through Vermont's children's health insurance program, known as Dr.  
26 Dynasaur. *See generally* Vt. Agency of Hum. Servs., Health Benefits Eligibility &  
27 Enrollment Rules, §§ 2.03(b), 7.02(b), 7.03(a)(3), 17.02, 17.03,  
28 <https://humanservices.vermont.gov/on-line-rules/hbee/1hbee-combined-doc-with->



1 master-toc-6.28.19.pdf. The program includes mental health services, which may  
2 face increased demand in cases of prolonged detention. These services include  
3 screening, prevention services, social supports, treatment, counseling, and crisis  
4 response. *See* Vt. Dep't. of Health Access, *Health Care Programs Handbook* 26  
5 (2016),  
6 [https://www.greenmountaincare.org/sites/gmc/files/ctools/2016%20VT\\_HlthcarePr](https://www.greenmountaincare.org/sites/gmc/files/ctools/2016%20VT_HlthcareProgramsHandbook_FINAL.pdf)  
7 [ogramsHandbook\\_FINAL.pdf](https://www.greenmountaincare.org/sites/gmc/files/ctools/2016%20VT_HlthcareProgramsHandbook_FINAL.pdf).

## 8 **S. Virginia**

9 470. Immigrants arriving in Virginia, including those ICE holds in family  
10 detention facilities, become residents of Virginia, attend Virginia schools, and have  
11 access to a number of state-funded resources. Welcoming immigrant children and  
12 families to Virginia after they have been held in long-term detention facilities will  
13 result in the additional expenditure of limited state resources in the areas of public  
14 education, mental health, and other social and health services, due to the increased  
15 trauma that will be suffered under the Rule.

16 471. Thousands of unaccompanied immigrant children have been placed  
17 with family members and other adult sponsors in Virginia since Fiscal Year 2014,  
18 including 3,127 children thus far in Fiscal Year 2019.

19 472. Virginia reasonably believes that immigrant families who are held in  
20 family detention facilities under the Rule and obtain protection from deportation  
21 will settle in Virginia upon their release from federal custody.

22 473. All children in Virginia, including immigrant children, are entitled to a  
23 free public education. The Virginia Department of Education provides the state  
24 share of the cost for educating students enrolled in public schools, and the enrolling  
25 local school division is responsible for paying the local share of the cost for  
26 educating students enrolled in public schools at a total per pupil statewide average  
27 expenditure in excess of \$10,000. Virginia state and local support services  
28 available to immigrant children include trauma-informed care strategies in school

1 and school mental health/psychological services.

2 474. The Virginia Department of Health and the Virginia Department of  
3 Behavioral Health and Developmental Services administer health and mental health  
4 programs that are accessible to immigrants. The Virginia Department of Health's  
5 Newcomer Health Program is charged with identifying and eliminating health  
6 related barriers to the successful resettlement of Virginia's refugee population.  
7 This program coordinates and facilitates initial health assessments for all newly  
8 arriving immigrants with a refugee or asylum status. The Virginia Department of  
9 Health's Office of Multicultural and Community Engagement develops programs  
10 and partnerships to empower racial and ethnic minority communities, including  
11 immigrants, to promote awareness of health inequities. The Virginia Department of  
12 Behavioral Health and Developmental Services administers Virginia's Refugee  
13 Healing Partnership, a program focused on refugee mental health. The Virginia  
14 Department of Behavioral Health and Developmental Services mental health  
15 program provides services for immigrant populations, including refugees and  
16 unaccompanied children.

17 475. The Office of Newcomer Services in the Virginia Department of  
18 Social Services administers Virginia's Refugee Resettlement Program, which  
19 provides assistance to newly arrived refugees to support long term social and  
20 economic integration. In Fiscal Year 2017, at least 4,268 refugees arrived in  
21 Virginia and were eligible to receive assistance from the Commonwealth in the  
22 form of nutrition assistance, cash assistance, energy assistance, medical services,  
23 medical screening, employment services, child care assistance, and refugee health  
24 education and outreach program and services for older refugees. The Office of  
25 Newcomer Services also administers the Unaccompanied Refugee Minors Program  
26 and the Virginia Refugee Student Achievement Program, two programs exclusively  
27 for immigrant children.  
28

1           **T. Washington**

2           476. Every year hundreds of children are released from ORR custody and  
3 reunified with family members or other adult sponsors in Washington. Many of  
4 these children become residents, attend Washington schools and, in some cases,  
5 grow into adults raising their own families in Washington communities. For Fiscal  
6 Year 2019, the last year for which complete data are available, ORR released more  
7 than 500 children with Washington resident sponsors, and dozens of other children  
8 were placed in the various state-licensed care facilities in Washington.

9           477. Washington reasonably believes that immigrant families who are held  
10 in family detention facilities under the Rule and obtain protection from deportation  
11 will also settle in Washington upon their release from federal custody.

12           478. Washington funds a State Refugee Coordinator to ensure that state  
13 agencies collaborate with local partners including clinicians, community based  
14 organizations, health coalitions, and voluntary agencies to address refugee health  
15 issues. In addition, the Washington State Refugee Health Promotion Project is a  
16 collaboration between state agencies, health providers, and resettlement agencies  
17 such as Seattle Children's Hospital and Lutheran Community Services Northwest to  
18 improve health outcomes and enable successful resettlement for refugee  
19 populations. The City of Seattle's New Americans Program is one of sixteen  
20 different community-based programs in Washington providing employment  
21 services, vocational English language programs, food assistance, and application  
22 and preparation assistance for the naturalization exam. The needs these programs  
23 address will only be increased by the additional trauma that migrants will endure  
24 while languishing in unlicensed federal facilities, without any state minimum  
25 regulatory standards governing the conditions of their confinement.

26           479. Washington's Office of Refugee and Immigrant Assistance provides  
27 comprehensive economic stability and immigration services to more than 10,000  
28 refugees and immigrants each year, including asylees and unaccompanied children,

1 using an annual budget of nearly \$28 million. One of Washington's state social  
2 service programs partners with local governments, community and technical  
3 colleges, ethnic community-based organizations, and other service provider  
4 agencies to deliver educational services, job training skills, assistance establishing  
5 housing and transportation, language classes, and other comprehensive support  
6 services. These programs are almost certain to require more state financial  
7 assistance to address the needs of families and children held indefinitely in  
8 unlicensed federal facilities.

9 480. Educational services, which are largely state-funded, will be  
10 complicated by the trauma of family detention. All children in Washington are  
11 entitled to a free public education regardless of immigration status or natural origin.  
12 The Washington State Constitution declares that it is "the paramount duty of the  
13 state to make ample provision for the education of all children residing within its  
14 borders, without distinction or preference on account of race, color, caste, or sex."  
15 Washington's Legislature has also expressly prohibited discrimination in  
16 Washington public schools on the basis of, among other things, race, creed,  
17 religion, color, or national origin. Wash. Rev. Code § 28A.642.010.

18 481. The public schools of the State of Washington make available a free,  
19 public education to all children residing within Washington, regardless of that  
20 child's citizenship status or country of origin. The state's public school educators  
21 welcome all children within Washington State and are deeply committed to  
22 ensuring that all children, regardless of their race, immigration status, or national  
23 origin, have an opportunity to receive basic education.

24 482. Washington has almost 300 public school districts that serve over a  
25 million children. The State apportions state and federal funding to districts using  
26 numerous formulas and grants that recognize variable costs of districts and the  
27 special needs of disadvantaged students. Depending on the child's needs and  
28 location, per pupil spending from the state general fund ranges anywhere from

1 \$6,000 to \$15,000 per child. Students with disabilities, for example, those who  
 2 come from linguistically and culturally diverse backgrounds, and those who are  
 3 struggling to meet state learning standards, will have greater needs and thus require  
 4 more state funding to have those needs met.

5 483. The average state general fund expenditure per pupil for 2016-17 was  
 6 over \$11,800 per child. More than 90% of Washington's school funding comes  
 7 from state and local, rather than federal, sources. For the 2017-19 biennium, state  
 8 spending for basic education will total over \$22 billion, with over \$16 billion  
 9 allocated to basic general education services.

10 484. Defendants' Rule will adversely affect Washington's financial  
 11 interests, as it must expend additional resources to address the harms inflicted on  
 12 increasing numbers of immigrant parents and children. State programs, including  
 13 those for housing assistance, foster care, child welfare services, social and health  
 14 services, and educational services are all likely to experience significant fiscal  
 15 impacts.

## 16 **ALLEGATIONS FOR INJUNCTIVE AND DECLARATORY RELIEF**

17 485. An actual controversy exists between the parties within the meaning of  
 18 29 U.S.C. § 2201(a), in that Plaintiffs contend that the Rule is invalid and  
 19 Defendants contend the opposite.

20 486. The Rule, if implemented, will cause harm to the States and their  
 21 residents for which there is no remedy at law.

## 22 **FIRST CLAIM FOR RELIEF**

### 23 ***(Ultra Vires Agency Action)***

24 487. Plaintiffs incorporate by reference all preceding paragraphs as if fully  
 25 set forth herein.

26 488. States have long been responsible for ensuring proper care and  
 27 supervision of children in government custody, including the licensing of facilities  
 28 that provide for the residential care of children in the custody of the government.

1           489. The federal government has never licensed facilities for the care of  
2 children and lacks the authority—much less the expertise—to intrude into this area  
3 of law, traditionally reserved to the states.

4           490. Congress has not authorized DHS to establish an alternative licensing  
5 scheme for facilities that provide residential care and supervision of children or  
6 families.

7           491. The Rule replaces state standards for the care and supervision of  
8 children with ICE's Residential Standards.

9           492. The Rule replaces state oversight over the care and supervision of  
10 children in residential facilities with inspections by federal contractors.

11           493. The Rule's usurpation of traditional state authority over the care and  
12 supervision of children and its creation of an alternative federal licensing scheme  
13 for family detention facilities is *ultra vires* in excess of statutory authority granted  
14 to DHS by Congress.

## 15           **SECOND CLAIM FOR RELIEF**

### 16           **(Violation of Administrative Procedure Act, 5 U.S.C. §§ 701-706)**

17           494. Plaintiffs incorporate by reference all preceding paragraphs as if fully  
18 set forth herein.

19           495. Although the stated purpose of the Rule is to implement the *Flores*  
20 Agreement, the Rule sets forth standards that violate critical, material requirements  
21 of that Agreement and fail to further its goals and core principles.

22           496. The Defendant agencies' explanation of the Rule runs counter to the  
23 evidence before them, the reasons proffered for the Rule are pretextual, and, in  
24 promulgating the Rule, Defendant agencies have failed to consider important  
25 aspects of the problem at issue.

26           497. The Rule is unsupported by a reasoned basis for departure from the  
27 terms of the *Flores* Agreement, previous regulations, and past practice.

28           498. The Rule is arbitrary, capricious, an abuse of discretion, and contrary

1 to law.

2 499. The Rule is in excess of statutory jurisdiction, authority, and  
3 limitations and short of statutory right.

4 500. The Rule is contrary to constitutional right.

5 501. For these reasons, the Rule violates the Administrative Procedure Act,  
6 5 U.S.C. §§ 701-706.

### 7 **THIRD CLAIM FOR RELIEF**

#### 8 **(Due Process Clause of the Fifth Amendment of the U.S. Constitution)**

9 502. Plaintiffs incorporate by reference all preceding paragraphs as if fully  
10 set forth herein.

11 503. Adults and children have a fundamental liberty interest in being free  
12 from imprisonment.

13 504. The current presidential administration has repeatedly sought to  
14 terminate the release and licensed care requirements for children in federal  
15 immigration custody in order to subject children and families to detention  
16 throughout their immigration proceedings, without regard to their individual risk of  
17 flight or danger to the community.

18 505. The Rule subjects children and their families—including individuals  
19 who have been found to have credible fear of persecution and referred to an  
20 immigration court for proceedings under Section 240 of the Immigration and  
21 Nationality Act—to prolonged and indefinite detention at Defendants' discretion.

22 506. The Rule provides for this detention without affording each individual  
23 an opportunity to be heard by a neutral magistrate and to seek release on the basis  
24 that he or she poses no risk of flight or danger to the community.

25 507. The Rule fails to guard against the imposition of secure detention  
26 conditions on children that do not present a risk of flight or danger.

27 508. The Rule interferes with parents' ability to make choices regarding  
28 their children's education and well-being. By preventing parents from allowing



1 their children to reside at liberty with a trusted relative or friend, the Rule violates  
 2 their rights as parents and their children's rights to family integrity.

3 509. Defendants' stated interest in imposing mandatory detention upon  
 4 children and families who pose no risk of flight or danger to the community to deter  
 5 other noncitizens from entering the United States, including those seeking asylum  
 6 and other protection under U.S. law and international treaty obligations, is an  
 7 invalid and illegitimate basis for civil detention.

8 510. The detention-related harms suffered by children and families who  
 9 ultimately obtain protection from deportation and settle in the States as a result will  
 10 also impact the communities in which they live and require additional support and  
 11 services from the States.

12 511. For the foregoing reasons, the Rule violates the procedural and  
 13 substantive components of the Due Process Clause of the Fifth Amendment to the  
 14 U.S. Constitution.

### 15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs State of California, Commonwealth of  
 17 Massachusetts, State of Connecticut, State of Delaware, District of Columbia, State  
 18 of Illinois, State of Maine, State of Maryland, State of Michigan, State of  
 19 Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of  
 20 New York, State of Oregon, Commonwealth of Pennsylvania, State of Rhode  
 21 Island, State of Vermont, Commonwealth of Virginia, and State of Washington  
 22 request that this Court:

- 23 1. Enter a preliminary and permanent injunction that enjoins Defendants
- 24 from implementing the Rule;
- 25 2. Postpone the effective date of the Rule, pending judicial review,
- 26 pursuant to 5 U.S.C. § 705;
- 27 3. Enter an order setting aside and vacating the Rule as unlawful,
- 28 pursuant to 5 U.S.C. § 706(2);

- 1           4.     Issue a declaration that the Rule is
- 2                 a. *ultra vires*,
- 3                 b. violates the Administrative Procedure Act, and
- 4                 c. violates the Due Process Clause of the Fifth Amendment of the U.S.
- 5                 Constitution;
- 6           5.     Award the States their costs and expenses, including reasonable
- 7                 attorneys' fees and expert witness fees; and
- 8           6.     Award such further and additional relief as is just and proper.
- 9
- 10

11     Dated: August 26, 2019

Respectfully submitted,

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